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Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LAURIE WALKER,

Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITION FOR WRIT OF CERTIORARI

LAURENCE H. TRIBE
Counsel of Record
BRIAN STUART KOUKOUTCHOS
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

THOMAS A. VOLK
ROBERT G. SCOFIELD
1721 Second Street
Sacramento, California

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BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

QUESTIONS PRESENTED

I. Having amended its criminal child neglect statute to authorize parents to substitute prayer for medical treatment, does a state violate its due process duty of fair warning when it suddenly prosecutes a parent who chose prayer treatment for her child in accord with the statutory amendment?

II. Do the Religion Clauses permit such prosecution to proceed on the theory that courts, prosecutors, and juries may be entrusted to determine the reasonableness of a parent's decision, pursuant to an express statutory authorization, to put her faith in the power of prayer rather than to call a doctor when her child fell ill?

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OPINIONS BELOW

The decision of the Supreme Court of California is reported at 253 Cal.Rptr. 1 and reprinted as Appendix A. The opinion of the California Court of Appeal for the Third Appellate District is reported at 222 Cal.Rptr. 87 and reprinted as Appendix B. The decision of the California Superior Court for the County of Sacramento denying petitioner's motion to dismiss is reprinted as Appendix C.

JURISDICTION

The decision of the Supreme Court of California denying a writ of prohibition was entered on November 10, 1988. A timely petition for rehearing was denied on January 5, 1989. *See* Appendix E. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a). *See Madruga* v. *Superior Court of California*, 346 U.S. 556, 557 n.1 (1954).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First Amendment to the United States Constitution provides in relevant part:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof. . . .

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law . . . .

California Penal Code § 270 provides in relevant part:

> If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor . . . .
>
> If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute "other remedial care," as used in this section.

California Penal Code § 273a(1) provides:

> Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4 or 6 years.

California Penal Code § 192(b) provides in relevant part:

> Manslaughter is the unlawful killing of a human being without malice. . . . Involuntary [manslaughter is] . . . the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

STATEMENT OF THE CASE

A. Introduction

Petitioner Laurie Walker, a Christian Scientist, chose to treat her daughter's flu symptoms with prayer rather than medicine, in accord with the tenets of her religion. At one time that failure to provide necessary medical treatment would have constituted a violation of the California child neglect statute, California Penal Code § 270 — the only law used by California for the last hundred years to prosecute parents for religiously-motivated failure to furnish medical care to their children. But in 1976, § 270 was amended expressly to legalize the provision of spiritual treatment in lieu of conventional medical care. The California Legislature was well aware that this message of legalization would cast doubt on whatever possibility might otherwise have existed of parental liability under the felony child endangerment, Cal.Pen.Code § 273a(1), and involuntary manslaughter statutes, Cal.Pen.Code § 192(b) — laws whose language might be seen as covering religiously-based failures to provide medical care, although they had never before been used to prosecute such cases. Nevertheless, the Legislature chose to disregard the ambiguity and to remain silent.

According to the California Supreme Court, the Legislature's "considered silence" (A17)[1] was sufficient to render Laurie Walker liable to prosecution for manslaughter and child endangerment. Notwithstanding the evidently perplexing relationship among the child neglect, child endangerment and manslaughter statutes, the court ruled that the statutory scheme gave Walker fair warning of the criminality of her conduct. The court below also rejected the proposition that the statutory regime under which Walker was prosecuted delegates to pros-

[1] References to the Appendices bound with this Petition will be denoted "A ____."

ecutors, courts, and juries too much leeway to engage in constitutionally impermissible inquiries and to base their decisions on arbitrary or illegitimate grounds. All a court or jury has to decide, we are told, is whether it was unreasonable for Walker to leave her faith in God and to persist in relying on prayer alone, pursuant to the express authorization in § 270, when her daughter remained sick.

B. Statement of Facts

Since 1872, the State of California has informed its people of the "necessities that parents must furnish their children" (A3) through the words of its child neglect statute, § 270 of the California Penal Code. Among those enumerated necessities is "medical attendance, or other remedial care." § 270. For more than a century, § 270 served as the exclusive vehicle for prosecuting Christian Scientists and members of other religious sects who do not provide conventional medical care to their children, but treat their illness and injuries through prayer and spiritual means. *See, e.g. People* v. *Arnold*, 58 Cal.Rptr. 115, 426 P.2d 515 (Cal.S.Ct. 1967) (misdemeanor-manslaughter prosecution, predicated on violation of § 270, of mother who prayed for gravely ill child but provided no medical care).

In 1976, an amendment to § 270 was sponsored by The First Church of Christ, Scientist, in response to the prosecution in *Arnold* and similar cases. (A14). It is undisputed that the avowed purpose and effect of the amendment was to "shield from liability those parents who provide prayer in lieu of medical care for their children." (A7). The California Legislature amended § 270 to provide explicitly that parents who choose for religious reasons to treat their children "by spiritual means through prayer alone" are not guilty of "willfully omit[ting] . . . to furnish" the care the statute requires. As the California Supreme Court concluded below, the California Legislature

was "well aware" that the effect of this amendment on parental liability under the involuntary manslaughter (Cal.Pen.Code § 192(b)) and child endangerment (Cal.Pen.Code § 273a(1)) statutes was "unclear" (A15) (quoting analysis of Assembly Committee on Criminal Justice), but the Legislature "chose to disregard the issue." (A16).[2] Petitioner Laurie Walker is a member of The First Church of Christ, Scientist (hereafter the "Church"). Christian Science provides that no person may become a member of the Church unless he or she is prepared to rely completely on spiritual healing as practiced in Christian Science. Members of the Church believe that attempts to use medical means as an adjunct to or in combination with spiritual healing destroy a Christian Scientist's power to heal through prayer. Thus, spiritual healing is the *sine qua non* of Christian Science and a religious imperative for members of the Church.[3]

On February 21, 1984, Walker's four-year-old daughter, Shauntay, fell will with flu-like symptoms and four days later developed a stiff neck. Consistent with the tenets of her religion, Walker treated her daughter's illness by engaging an accredited Christian Science prayer practitioner to pray for Shauntay and a Christian Science nurse to provide practical care and help make the child comfortable. Shauntay died on March 9, 1984. An autopsy established meningitis as the cause of death. The State of California charged Walker with felony child endangerment (§ 273a(1)) and involuntary manslaughter (§ 192(b)) based on allegations that a "reasonable" person would not have clung so long to the religious belief, however devout and sincere, that her daughter could be healed by "spiritual means through prayer alone in accordance with the tenets and practices of a recognized church," administered "by

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[2] Several other California statutes also authorize prayer in lieu of orthodox medical treatment. *See, e.g.*, Cal.Pen.Code § 11165.2; Cal. Welf. & Inst. Code §§ 369(f), 739(f), 7104, 14004, 14059, 14132, 16509.2 and 18950.5.

[3] *See Church Manual* of the First Church of Christ, Scientist at 39, 50-56.

a duly accredited practitioner thereof," Cal.Pen.Code § 270. California thus chose to prosecute Walker under §§ 192(b) and 273a(1), which had never before been used for such cases, for doing just what the 1976 amendment to § 270 told her she could do.

C. Proceedings Below

After a preliminary hearing, Walker moved to dismiss the charges on the grounds that the prosecution contravened the California statutory scheme and denied her due process of law by criminalizing her conduct without fair warning. *See* Appendix C. Walker then petitioned the California Court of Appeal for a writ of prohibition and a stay. The petition and stay were summarily denied, and Walker sought review in the Supreme Court of California. That court granted the petition and remanded to the Court of Appeal with directions to issue an alternative writ of prohibition. After further deliberation, the Court of Appeal issued an opinion again denying Walker's petition. *See* Appendix B. She thereafter filed and the California Supreme Court accepted a second petition for review.

The California Supreme Court affirmed the Court of Appeal's denial of the writ, holding that although "§ 270 exempts parents who utilize prayer treatment from the statutory requirement to furnish medical care" (A7), California prosecutors may still charge parents who use prayer in lieu of medical treatment with felony child endangerment (§ 273a(1)) and involuntary manslaughter (§ 192(b)). (A17).

The majority of the court acknowledged the Legislature's own recognition that the extent of criminal liability established by these three statutes was "unclear" (A15), and the dissenting opinion argued that the 1976 amendment precluded prosecution under both § 273a(1) and § 270 but not under § 192(b). (A56) (Broussard, J., concurring in part and dissenting in part). Despite

the manifestly confusing relationship among the child neglect, child endangerment and manslaughter statutes, the court held that the statutory scheme gave Walker fair notice of the criminality of her conduct. It was sufficient for the majority that "the members of the Legislature were fully conscious of the potential liability remaining under §§ 192(b) and 273a(1) for conduct they had legalized with respect to § 270 but simply chose to leave the matter unaddressed." (A17). Walker's conduct was thus rendered criminal, by statutes never before used to prosecute such conduct, not by an act of the Legislature but by what the court below called its "considered silence." (A17).

The court below also rejected the proposition that the statutory regime under which Walker was prosecuted delegated to prosecutors, courts, and juries too much latitude to engage in constitutionally forbidden inquiries and to base their decisions on arbitrary or illegitimate grounds. *See Kolender* v. *Lawson*, 461 U.S. 352 (1983). (A35-36). The court stated that "criminal negligence is a question of fact to be determined in light of contemporary community standards" (A27), and in this case that means that the relevant (and quite routine and manageable) inquiry under §§ 192(b) and 273a(1) is the "objective reasonableness" of Walker's decision to persist in relying on prayer alone, pursuant to § 270, when her daughter continued to be seriously ill. (A29); (A36-37).

REASONS FOR GRANTING THE WRIT

The California Supreme Court has decided an issue of central significance to every religious group in the United States in a manner that avoids both options this Court's decisions leave open for resolving conflicts between secular authority and religious faith. California law, as authoritatively interpreted

by the California Supreme Court, *neither* accommodates Christian Scientists and others who rely exclusively on prayer to combat illness, *nor* leaves them in the same situation as other citizens who do not share those religious beliefs. Having arrived at the fork in the road where the paths of accommodation and identical treatment diverge, California has forged a novel path that attempts to straddle both options but fails to satisfy either one. If left unreviewed, the decision below will simultaneously (1) confront religious adherents with ambiguous and conflicting legal directives; and (2) entrust to law enforcement officials and juries the constitutionally forbidden task of sitting in judgment upon the reasonableness of religious beliefs.

By subjecting the petitioner to a criminal trial predicated upon the reasonableness of her decision to rely — in accord with state law — exclusively on prayer to treat her daughter's illness, the judgment below spawns a novel and disturbing theory of criminal liability that can be administered only through what amount to trials of faith forbidden by the Constitution.

1. It is important to note the issues that this case does not present. This case does not involve a clear state choice against accommodating particular religious beliefs, and requiring members of a given sect, whose children a reasonable person would recognize as ill or whose children display particular symptoms, to discharge legal duties identical to those imposed on the population at large. *Cf. United States* v. *Lee*, 455 U.S. 252 (1982); *Prince* v. *Massachusetts*, 321 U.S. 158 (1944); *Commonwealth* v. *Barnhart*, 497 A.2d 616 (Pa.Super. 1985), *cert. denied*, 109 S.Ct. 55 (1988). Nor does this case involve policing the outer limits of acceptable accommodation. *Cf. Texas Monthly* v. *Bullock*, No. 87-1245 (Feb. 21, 1989); *Corporation of the Presiding Bishop* v. *Amos*, 107 S.Ct. 2862 (1987). Nor does petitioner urge in this case that accommodation is constitutionally compelled. *Cf. Wisconsin* v. *Yoder*, 406 U.S. 205 (1972).

Prior to the 1976 amendment to the child neglect statute, § 270, there was no accommodation under California law. Christian Scientists were required to provide medical care for their children just like all other parents, on pain of criminal prosecution. *See, e.g., People* v. *Arnold*, 58 Cal.Rptr. 115, 426 P.2d 515 (Cal.S.Ct. 1967). When § 270 was amended in 1976 to allow prayer as an alternative to "medical attendance," it appeared that accommodation was to be California's choice — prosecution of Christian Scientists under § 270, the previous vehicle for all such prosecutions when children died from lack of medical attention, was statutorily foreclosed. But now the California Supreme Court has said that the accommodation of petitioner's religion, contrary to all indications, was actually limited to one misdemeanor statute, § 270. Prosecution can continue under other laws, where the standard of criminal negligence is whether a reasonable person in the position of a Christian Scientist with an ailing child, expressly authorized by law to treat her child with prayer alone, would continue to rely on prayer as the child's condition deteriorated or threatened death.

2. In deciding that the California legislature has not, contrary to appearances, taken the path of accommodation and has in fact criminalized petitioner's conduct, the judgment of the court below flatly conflicts with the "fair warning" due process decisions of this Court forbidding prosecution in the face of mixed signals or deliberate ambiguity in the criminal law. That judgment therefore warrants plenary review by this Court.

The requirement that statutes provide "fair warning" of the conduct proscribed is "the first essential of due process." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). *See also Marks* v. *United States*, 430 U.S. 188, 195 (1977). This principle has special force where laws impose "criminal penalties," lack "a scienter requirement," regulate noneconomic conduct of individuals, or "threaten[] to inhibit the exercise

of constitutionally protected rights." *Village of Hoffman Estates* v. *Flipside*, 455 U.S. 489, 498-99 (1982).

The case at hand presents all of the factors triggering heightened fair warning scrutiny. Were she convicted of involuntary manslaughter and child endangerment, Laurie Walker would face up to 6 years in prison.[4] These crimes require no showing of intent. Furthermore, Walker was especially unlikely to understand that her conduct was unlawful. It is undisputed that Walker's reliance on prayer, far from being morally culpable, was motivated by the highest principles of religious piety and love for her child.[5] And Walker, unlike a business entity faced with a confusing economic regulation, obviously lacked the resources and the sophistication to obtain the complex legal investigation necessary to ascertain whether her conduct might be criminalized. *See Hoffman Estates*, 455 U.S. at 498. Finally, the most important factor affecting the clarity that the Constitution demands of a law is whether it "abut[s] upon sensitive areas of basic First Amendment freedoms," *Grayned* v. *City of Rockford*, 408 U.S. 104, 109 (1972), and the court below conceded that defendant "unquestionably relied on prayer treatment as an article of genuine faith, the restriction of which would seriously impinge on the practice of her religion." (A32).

In open disregard of this body of authority, the California Supreme Court's due process scrutiny was cursory, not close. The court below authorized the state to prosecute Laurie Walker under an unforeseeable judicial interpretation that reconciled statutes giving conflicting commands, extrapolated a criminal

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[4] *See* Cal.Pen.Code §§ 193, 273a.

[5] This Court has mandated especially clear warning where a defendant's conduct, although prohibited by the state, is motivated by principle and cannot in itself "be deemed . . . immoral." *Bouie* v. *City of Columbia*, 378 U.S. 347, 362 (1964).

prohibition from legislative silence, and disregarded her reliance on affirmative signals that her conduct was lawful. One of the cardinal principles of the fair warning doctrine is that inexplicably conflicting commands in statutes providing for criminal penalties cannot be given legal effect. *United States* v. *Cardiff*, 344 U.S. 174, 176-77 (1952); *United States* v. *Pennsylvania Industrial Chemical Corp.*, 411 U.S. 655, 672-75 (1973). The various California statutes dealing with the provision of care to sick children gave signals so conflicting that, as a matter of law, Walker cannot be deemed to have received fair warning that she might be prosecuted for providing prayer in lieu of medical care if her child died.

The manslaughter (Cal.Pen.Code § 192(b)) and felony child endangerment statutes (§ 273a(1)) under which Walker is being prosecuted were not amended in 1976, as § 270 was, to create an explicit exemption for those who provide spiritual rather than medical care to their ill children. But there was no need for any such amendment. For it is undisputed that the child neglect statute, the one criminal law specifically imposing upon a parent the legal duty "to furnish necessary . . . medical attendance or other remedial care for his or her child" (Cal.Pen.Code § 270), makes it explicit that the provision of prayer to a sick child in lieu of medical treatment not only is *lawful* but is *expressly authorized* by the legislature. (A6-7). Moreover, a "plethora of statutes exempting prayer practitioners and their facilities from medical licensure requirements or variously accommodating individuals who choose to rely on such treatment" (A17-18) sent a similar message that the legislature approved of the use of prayer in lieu of medical treatment.[6] As noted in a separate concurring opinion below, the

[6] *See, e.g.*, Cal.Welf. & Inst.Code §§ 14004, 14132(a), 16509.1, 18950.5; Cal.Pen.Code § 11165.2; Cal.Educ.Code § 44978; Cal.Unemp.Ins.Code §§ 2627.5(c)(4), 2709; Cal.Bus. & Prof.Code §§ 2063, 2731, 2789; Cal.Health & Safety Code §§ 430.8, 1270, 1505(f), 1569.145(c), 1569.31, 1709, 1738.

"Legislature has repeatedly designed exemptions for parental use of prayer treatment with precisely the language found in § 270." (A49) (Mosk, J., joined by Kaufman, J., concurring).

Prior to the decision below, therefore, Laurie Walker could reasonably have believed that she committed no crime in relying solely on prayer and her faith in God to sustain her ailing child. It is undisputed that previous prosecutions in such circumstances of Christian Scientists (and adherents of other religions that proscribe traditional medical treatment) had been conducted exclusively under the child neglect statute, § 270. *See, e.g., People* v. *Arnold*, 58 Cal.Rptr. 115, 426 P.2d 515 (Cal.S.Ct. 1967) (manslaughter prosecution, predicated on § 270, of mother who prayed for sick child). That prosecutorial route was closed in 1976 when the California Assembly, in an amendment that the court below found was "sponsored by the Church [of Christ, Scientist] in response to . . . *Arnold*, a case involving a misdemeanor-manslaughter prosecution" (A14), altered § 270 to "shield from liability those parents who provide prayer in lieu of medical care for their children" (A7). Petitioner has been unable to discover *even a single instance,* prior to this case, in which a person in her situation was prosecuted under §§ 192(b) or 273a(1). For all intents and purposes, the application of these statutes to cases such as this one has fallen into desuetude for more than a century. As Alexander Bickel wrote in his discussion of the concepts of desuetude and fair warning, "after seventy-five years of nonenforcement, . . . the first prosecution, at any rate, has all the vices of an *ad hoc* official decision." A.Bickel, *The Least Dangerous Branch* 152-53 (2d ed. 1986).

These conflicting statutory directions create not simply a negative gap in the state's scheme of warning signals but a positive trap for anyone in Walker's position. That trap cannot be remedied by the California Supreme Court's *ex post facto* attempt to construct a rationalizing principle that might in

retrospect reconcile the statutes. That court attempted to reconcile the conflicting commands of the child neglect (§ 270) and manslaughter (§ 192(b)) and child endangerment (§ 273a(1)) statutes by arguing that "§§ 192(b) and 273a(1) protect against grievous and immediate physical harm while § 270 assures the routine provision of child support at parental expense. In light of these distinguishable objectives, it cannot be said that the legality of defendant's conduct under § 270 constitutes an 'inexplicably contradictory command' with respect to the separate requirements of §§ 192(b) and 273a(1)." (A38-39).

It is certain that this rationalization of these statutes must control in all future prosecutions, since the California Supreme Court is the ultimate authority on California law. But it is equally certain that if *this* counterintuitive rationalization satisfies the Due Process Clause and may be used to prosecute Laurie Walker in this case, then this Court's fair warning jurisprudence has been irretrievably diluted. For the statutory "reconciliation" of conflicting signals wrought by the court below was wholly unforeseeable. Indeed, in light of previous prosecutorial practice and judicial decisions, this revisionist rationalization goes beyond routine implausibility to hover on the threshold of the surreal. If, as we are now told by the California Supreme Court, the purpose of § 270 is "manifestly distinguishable" from the purposes of §§ 192(b) and 273a(1), (A12-13), then why was § 270 used for a hundred years precisely as §§ 192(b) and 273a(1) are being used here — to prosecute religious adherents like Laurie Walker for treating their children with prayer alone? If § 270 was never "intended to protect children from life-threatening bodily harm" but only to "procure[] their routine support" (A13 n.6), then why was this very statute used, in a manner expressly endorsed by the California Supreme Court, to prosecute Florence Arnold when her child died following treatment by prayer? *See Arnold*, 426 P.2d at 517-18, 523.

A criminal prohibition violates due process if "men of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally*, 269 U.S. at 391. Sections 270, 273a(1) and 192(b) required Laurie Walker to guess at their collective meaning; even the members of the California Supreme Court differed as to their application. Although the majority below found the purposes of the child neglect and child endangerment statutes to be "manifestly distinguishable" (A12), the dissenting opinion flatly disagreed, calling the majority's rationalization "unrealistic and contrary to all of the legislative history" (A56) (Broussard, J., dissenting). The dissent found it "overwhelmingly clear that the Legislature sought to preclude child endangerment liability of persons coming within the religious exemption in § 270." (A50). Such controversial and unpredictable *post hoc* rationalizations cannot provide fair warning and consequently do not provide due process of law. *Cardiff*, 344 U.S. at 176-77.

The decision below is also at odds with decisions of this Court holding that prosecution under an unpredictable or counterintuitive judicial interpretation of a statutory prohibition violates due process whether or not the state has given conflicting signals, *see Rabe* v. *Washington*, 405 U.S. 313 (1972); *McBoyle* v. *United States*, 283 U.S. 25 (1931), because Walker's alleged criminality varies unpredictably not with what she *chooses to do* but with how her choice *turns out* — something over which she surely has no control. She could not have anticipated that, although providing prayer instead of medicine would *not* subject her to prosecution for child neglect — "willfully omit[ting] . . . to furnish necessary . . . medical attendance," § 270 — it *would* subject her to prosecution for child endangerment — "willfully caus[ing] or permit[ting] [her] child to be placed in such situation that its person or health is endangered," § 273a(1) — and, if her prayers were unfulfilled and her daughter died, to prosecution for involuntary man-

slaughter (§ 192(b)) as well. Most importantly, Walker is not being prosecuted for relying on prayer by a state that requires her to summon a doctor whenever her child falls ill, whatever her religious beliefs might be. Walker is being prosecuted for putting her faith in prayer by a state that expressly authorizes her to do just that.

3. An especially disturbing aspect of the decision below is the conclusion — in clear conflict with decisions of this Court — that an intent to criminalize petitioner's conduct can be inferred from the California Legislature's conspicuous and considered silence following its recognition that its child welfare statutes send inconsistent and ambiguous signals. The California Supreme Court interpreted the state's statutory scheme so as to make criminal the very reliance on spiritual treatment which the state authorizes, when it is decided after the fact that a "reasonable" person would instead have sought medical help — that an ordinarily prudent person, even one expressly authorized by law to rely exclusively on prayer, would have stopped calling on God and have called an ambulance instead. That interpretation is based not on a legislative history of intent to criminalize conduct on this basis but on a legislative history of silence on this very issue.

The court below found that the California Assembly was well aware in 1976 that amending § 270 to eliminate liability for parents who "willfully omit[ ] . . . to furnish necessary . . . medical attendance" and instead treat their children's illness solely with prayer might send conflicting signals with respect to §§ 192(b) and 273a(1). The analysis of the Assembly Committee on Criminal Justice was that "[t]he bill appears unclear" with respect to possible prosecution for child endangerment and involuntary manslaughter: "If treatment by prayer is to be recognized in part, the parents should not be liable for the results of using a permitted mode of healing." (A15-16). According to the state court, the analysis of the Senate Com-

mittee on the Judiciary highlighted the same problem: "Under the heading 'Comment' and entirely capitalized, unlike any other portion of the document, were the following questions: 'DO THE PROVISIONS OF THIS BILL CONFLICT WITH SECTION 273a OF THE PENAL CODE? . . . MIGHT A PARENT BE IMMUNE FROM LIABILITY FOR FAILURE TO PROVIDE FOR THE HEALTH OF THE CHILD BECAUSE THEY [*sic*] CHOOSE TREATMENT BY PRAYER RATHER THAN COMMON MEDICAL TREATMENT, BUT INCUR LIABILITY IF THE CHILD SUFFERS ANY HARM?' " (A16) (capitalization by the Senate Committee).

The court below relied expressly on the California Legislature's "considered silence" (A17) in the face of the Legislature's awareness that the interaction of the amended child neglect statute with the manslaughter and child endangerment statutes created ambiguity about the scope of a parent's criminal liability for unsuccessful treatment with spiritual care: the members of the Legislature simply "chose to disregard the issues raised so prominently in their staff analysis" (A16). The California Supreme Court concluded that this "considered silence is an insufficient basis to infer that the Legislature . . . *exempted* from felony liability all parents who offer prayer alone to a dying child." (A17). (emphasis added). But the Due Process Clause compels the diametrically opposite conclusion: considered silence is an insufficient basis on which to infer that the Legislature intended to criminalize Walker's conduct. "Crimes are not to be created by inference." *United States* v. *Laub*, 385 U.S. 475, 487 (1967). *See also McBoyle* v. *United States*, 283 U.S. 25, 26-27 (1931).

4. This case presents the fair warning issue in a particularly stark form, unencumbered by the highly fact-specific context in which the issue typically arises. Coming before this court on a pre-trial writ of prohibition, Walker's argument rests purely on facts already in the public record: the previous history

of prosecutions, the legislative history of the amendment to the child neglect statute, and the complex and contradictory web of statutes concerning the provision of spiritual rather than medical care. Thus, this Court is faced squarely with a legislative scheme that deprives citizens of adequate and non-contradictory rules by which to guide their conduct. Prosecuting Walker based on the California Supreme Court's *post hoc* rationalization of this ambiguous scheme contravenes the basic principle that crimes "may not be created *nunc pro tunc*." *Laub*, 385 U.S. at 487. Under the Due Process Clause, statutory rationalizations and novel theories of criminality may not be hammered out on the brow of a defendant threatened with imprisonment. *See James* v. *United States*, 366 U.S. 213 (1961).

5. By expressly denying that the First Amendment is even *relevant* to the fair warning issue in this case, the California Supreme Court placed itself in square conflict with a long line of decisions by this Court, which has taken "special care to insist on fair warning when a statute . . . implicates First Amendment values." *Marks* v. *United States*, 430 U.S. 188, 196 (1977). *See also Buckley* v. *Valeo*, 424 U.S. 1, 40-41 (1976) ("Close examination of the specificity of the statutory limitation is required where, as here, the legislation imposes criminal penalties in an area permeated by First Amendment interests."); *Grayned* v. *City of Rockford*, 408 U.S. at 109; *Smith* v. *California*, 361 U.S. 147, 150-51 (1959). The court below summarily dismissed this entire line of authority as "inapposite" and flatly refused to apply heightened fair warning scrutiny. (A39 n.19). The California court baldly asserted that "free exercise is not implicated" when the law forces parents to guess about the point at which their state-sanctioned reliance on prayer becomes criminal, because conduct that endangers or takes the life of a child simply is not protected under the First Amendment. *Id.*

To begin with, this assertion cannot be reconciled with the state court's own recognition that this case involves "a religious infringement of significant dimensions" because "[d]efendant unquestionably relied on prayer treatment as an article of genuine faith, the restriction of which would seriously impinge on the practice of her religion." (A32). But the California court's refusal to attend closely to the fair warning issue is even more disturbing for two additional reasons.

First, the court completely failed to recognize that laws are subject to heightened fair warning scrutiny not only when they prohibit protected conduct but whenever they "abut upon" or "regulate" an "area . . . closely touching our most precious freedoms." *NAACP* v. *Button*, 371 U.S. 415, 438 (1963). If Walker's alleged conduct were substantively protected from state criminalization by the First Amendment — which she does not assert — then the statutes as applied to her would be prohibited as infringements of her free exercise right; fair warning would cease to be an issue.

The danger addressed by heightened fair warning scrutiny is not criminalization of protected conduct, but either (1) a chilling of protected conduct because laws that criminalize unprotected conduct are uncertain in their meaning and scope, *see, e.g.*, *Marks*, 430 U.S. at 195-96 (applying strict fair warning scrutiny to statute criminalizing the transport of unprotected, "obscene" materials); or (2) a delegation to prosecutors and juries of the power to engage in constitutionally impermissible inquiries and an invitation to base their decisions on arbitrary or illegitimate grounds. *See Kolender* v. *Lawson*, 461 U.S. 352, 358 (1983); *Smith* v. *Goguen*, 415 U.S. 566, 574-75 (1974); *Grayned*, 408 U.S. at 108-09. *Cf. United States* v. *Ballard*, 322 U.S. 78, 86 (1944) ("Whatever this particular [fraud] indictment might require, the First Amendment precludes" allowing the jury to question the defendants' religious beliefs).

Second, insensitivity to the First Amendment values involved in this case led the California Supreme Court, as demonstrated below,[7] to attempt to resolve the fair warning problems of the California statutes in a manner that *itself* violates First Amendment principles. For the court below has subjected Walker to a standard of liability that, far from escaping the delegation problem of fatally ambiguous laws, *cf. Kolender*, *Goguen*, and *Grayned*, *supra*, actually makes the criminality of her actions turn on a prosecutor's and a jury's after-the-fact determinations of the "reasonableness" of her religious beliefs. *Cf. United States* v. *Ballard*, *supra*.

6. The judgment below exposes petitioner and others whose religions proscribe traditional medical treatment to the sort of judicial evaluation of religious beliefs that this Court has long held to be forbidden by the First Amendment. The California Supreme Court's attempt to avoid the problem of fatal ambiguity presented by this case does not merely fail on its own terms; by delegating to prosecutors and juries the very discretion that the rule against ambiguous criminal laws is in part designed to avoid, *see Kolender*, 461 U.S. at 358, the state court's avoidance mechanism itself raises grave constitutional concerns. In response to Walker's claim that the contradictory statutes failed to provide her with adequate notice of the point at which lawful prayer treatment becomes unlawful, the court stated that the "'matter of degree' that persons relying on prayer treatment must estimate rightly is the point at which their course of conduct becomes criminally negligent. In terms of notice, due process requires no more." (A36-37). If there were no statutory accommodation of spiritual healing practices, this standard of criminality would present no due process problem.

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[7] *See infra* section 6.

The trouble is that treatment of one's children by means of prayer alone is specifically authorized by the state in § 270, so in the trial of a Christian Scientist such as the defendant, the question becomes "when does continued, state-sanctioned reliance on prayer alone cease to be a matter of faith and become a matter of criminal negligence?"

Simply put, the government's position is that when a child for whom one has prayed continues to languish, there comes a point (to be determined by a jury) at which any "reasonable" person would give up on God and head for the nearest emergency room. Under the standard of criminal negligence adopted by the California Supreme Court, whether Walker is deemed guilty or innocent necessarily depends upon a jury's assessment of the "reasonableness" of her decision to put her faith in prayer even when the severity of her child's illness put her faith to the test — that is, the reasonableness of her belief that prayer would suffice.

The danger inherent in such a governmental inquiry is illustrated by a jury charge in an English common law case, quoted at length by the court below. The determination of criminal negligence there involved "whether it was 'intended by God Almighty that persons should content themselves by praying for His assistance, without helping themselves, or resorting to such means as were within their reach for that purpose?' " (A26-27). The California Supreme Court found nothing objectionable in this inquiry, and noted only that the case confirmed the settled rule that "criminal negligence is a question of fact to be determined in light of contemporary community standards" (A27) — including, apparently, the community's feelings about what degree of religious devotion, in the face of how much bad news, is reasonable.

This sort of inquiry is flatly forbidden by the Free Exercise Clause of the First Amendment. The government undoubtedly has authority to regulate parental religious practices to secure

the welfare of children, *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), but such regulation must be accomplished within the boundaries established this Court's First Amendment jurisprudence. Under *United States* v. *Ballard*, 322 U.S. 78 (1944), judicial scrutiny of the rationality and verity of a defendant's religious beliefs is forbidden. "The miracles of the New Testament . . . [and] the power of prayer are deep in the religious convictions of many," and "[r]eligious experiences which are as real as life to some may be incomprehensible to others. Yet the fact that they may be beyond the ken of mortals does not mean that they can be made suspect before the law. . . . When the triers of fact undertake that task, they enter a forbidden domain." *Id.* at 86-87. *See also Presbyterian Church* v. *Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969) (courts cannot resolve disputes that necessarily require the civil courts to weigh the significance and meaning of religious doctrines).

Prosecution of the petitioner in accord with the judgment below would necessarily entail entry into that forbidden domain. Because of the authorization of prayer treatment in the child neglect statute, conviction of petitioner under a theory of criminal negligence necessitates a determination that her particular and enduring reliance on prayer was unreasonable. Yet under the decisions of this Court, judicial tribunals have no power to decide whether a citizen's religious beliefs are "acceptable, logical, consistent or comprehensible." *Thomas* v. *Review Board of the Indiana Employment Security Division*, 450 U.S. 707, 714 (1981). Nor may a court undertake to parse someone's faith, to compare it with the formal doctrines of her church, or to reconcile it with the beliefs of fellow members of her sect, a labor already begun in this case by the court below in its contentions (which adopt an analysis and appraisal of Christian Science doctrine offered by the State) that resort to medical care by petitioner would not have constituted "sin,"

or led to church "stigmatization," or resulted in "divine retribution." (A32). *See Thomas*, 450 U.S. at 715-16.

"[R]eligious doctrines . . . cannot be subjected to courtroom evaluation," *Founding Church of Scientology of Washington, D.C.* v. *United States*, 409 F.2d 1146, 1162 (D.C. Cir. 1969), yet that is the very project that the court below has set in motion by allowing the prosecution of Laurie Walker to go forward. Not even acquittal after trial would protect this petitioner, or others in her position, from having undergone the kind of inquisition into matters of faith that the First Amendment squarely forbids.

Having granted Laurie Walker the statutory right to delineate for herself the extent to which she will rely on "medical attendance" or on "spiritual means" to safeguard her daughter's health, § 270, and to mark off the respective roles of medical doctors and "duly accredited [prayer] practitioners" in caring for her child, *id.*, the State of California may no longer presume to tell her, after the fact, that the lines she has drawn are "unreasonable" and "criminally negligent." Laurie Walker "drew a line, and it is not for [the courts] to say that the line [s]he drew was an unreasonable one." *Thomas*, 450 U.S. at 715.

7. The decision below is not only insupportable, it is in conflict with the resolution of identical Free Exercise Clause issues by other states. In *Commonwealth* v. *Barnhart*, 497 A.2d 616 (Pa.Super. 1985), *cert. denied*, 109 S.Ct. 55 (1988), the Superior Court of Pennsylvania rejected on First Amendment grounds the very theory of criminal negligence adopted by the California Supreme Court in this case. When William and Linda Barnhart's son died of cancer that his parents had treated, in accord with the tenets of their church, with prayer alone, they were indicted (as petitioner was here) for involuntary manslaughter and child endangerment. 497 A.2d at 620.

A previous Pennsylvania case involving manslaughter prosecution following unsuccessful spiritual treatment, *Commonwealth* v. *Hoffman*, 29 Pa.C. 65 (Butler Co. 1903), had "[f]ram[ed] the issue as a question of reasonableness" — "the court asked the jury to determine whether an ordinarily prudent man would have relied on these remedies alone." *Barnhart*, 497 A.2d at 623. Like the California Supreme Court in this case, *see* p. 20, *supra*, the *Hoffman* court had reasoned that the determination of a Christian Scientist's criminal negligence turned on whether "the demands of ordinary prudence [would] be satisfied with [prayer] and nothing more? Or is there, side by side with faith and prayer, room for the employment of human agencies, without the employment of which the demands of ordinary prudence would not be satisfied? And we may well believe that the demands of ordinary prudence do not run counter to divine authority . . . The common faith of mankind relies not only upon prayer but upon the use of means which knowledge and experience have shown to be efficient." *Hoffman*, 29 Pa.C. at 69-70 (quotation marks omitted).

The *Barnhart* court forthrightly rejected such an inquiry, declaring that "[t]he First Amendment precludes scrutiny of the verity or validity of religious beliefs. Adoption of th[is] approach would entail our pitting one set of beliefs against another. Such a course would clearly violate the spirit of neutrality. We decline, therefore, to follow th[is] approach." 497 A.2d at 623. Instead, the Pennsylvania appellate court "focused on the parent's civil duty to the exclusion of any religious concerns." *Id.* at 624. This Court then denied certiorari. 109 S.Ct. 55 (1988).

The California Supreme Court could likewise have adopted a standard of liability both flexible and objective without running afoul of the First Amendment. For example, the court below might have considered prospectively invalidating the religious accommodation of § 270, *see* A40 (Mosk, J., concur-

ring), and then interpreting the criminal negligence standard of the child endangerment and manslaughter statutes to mandate conventional medical care whenever a jury determined that a reasonably prudent person would have believed a child to be seriously ill. Under such a standard, applied solely to future prosecutions, the state would inquire only into a defendant's knowledge of her child's condition but would not attempt to judge, as the decision below would have it do, the reasonableness of her religiously-based beliefs as to how that condition would respond to prayer.

The decision of the court below warrants plenary review by this Court for the very reason that the decision of the Pennsylvania court in *Barnhart* did not. In its efforts to rationalize the conflicting signals sent by the California child welfare statutes in order to eliminate the obvious fair warning defect, the court below created precisely the First Amendment problem that *Barnhart* avoided. California was not necessarily required to accommodate Laurie Walker's religious beliefs by statutorily authorizing prayer in lieu of medical attendance. Like the Pennsylvania regime sustained in *Barnhart*, California could have imposed on every parent an affirmative duty to provide a seriously ill child with medical care, adopting a standard that mandated such conventional medical treatment regardless of religious beliefs whenever the circumstances reasonably indicated that the child's condition was gravely impaired. *See Barnhart*, 497 A.2d at 624.[8] By failing to adopt such a standard, California invites prosecutors, judges, and juries to base their determination of culpability upon an evaluation of the reason-

[8] Petitioner does not contend that the state must apply a subjective test that would require acquittal if petitioner herself believed she was acting in a reasonably prudent manner in relying on spiritual treatment alone. Nor does she contend that the First Amendment limits a state to prescribing specific, inflexible tests for its objective standard of care — for example, a statute requiring a parent to obtain medical attendance whenever a child displays a defined set of symptoms, such as a specified degree of fever.

ableness of a parent's faith in the power of prayer. It is the clear command of this Court that such a belief "can[not] be made suspect before the law." *Ballard*, 322 U.S. at 87. Review by this Court is warranted because the path of pseudo-accommodation California has chosen to pursue is an avoidable — and therefore gratuitously unconstitutional — state choice from a range of options left open by the Religion and Due Process Clauses of the Constitution. If California may pursue this path, then every jurisdiction may pursue it.

CONCLUSION

By sending petitioner to trial on this novel theory of criminal liability, the decision below both threatens a regime of continuing entanglement between church and state and replaces genuine and meaningful accommodation of religion with deliberate obfuscation of legal duties and criminal liability that is the worst of all possible worlds. The legalization of prayer treatment wrought by the California Legislature's amendment to § 270 turns out to have been, from Laurie Walker's perspective, "a promise to the ear to be broken to the hope, a teasing illusion like a munificent bequest in a pauper's will." *Edwards* v. *California*, 314 U.S. 160, 186 (1941) (Jackson, J., concurring). A writ of certiorari is in order.

Respectfully submitted,

LAURENCE H. TRIBE
Counsel of Record
BRIAN STUART KOUKOUTCHOS
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

THOMAS A. VOLK
ROBERT G. SCOFIELD
1721 Second Street
Sacramento, California

March 6, 1989

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APPENDIX A

Laurie Grouard WALKER, Petitioner,

v.

The SUPERIOR COURT of Sacramento County, Respondent;

The PEOPLE, Real Party in Interest.

S.F. 24996.

Supreme Court of California,
In Bank.

Nov. 10, 1988.

MOSK, Justice.

We consider in this case whether a prosecution for involuntary manslaughter (Pen. Code, § 192, subd. (b)) and felony child endangerment (id., § 273a, subd. (1)) can be maintained against the mother of a child who died of meningitis after receiving treatment by prayer in lieu of medical attention. We conclude that the prosecution is permitted by statute as well as the free exercise and due process clauses of the state and federal Constitutions.

Defendant Laurie Grouard Walker is a member of the Church of Christ, Scientist (hereafter the Church). Her four-year-old daughter, Shauntay, fell ill with flu-like symptoms on February 21, 1984, and four days later developed a stiff neck. Consistent with the tenets of her religion, defendant chose to treat the

child's illness with prayer rather than medical care.[1] Defendant contacted an accredited Christian Science prayer practitioner who thereafter prayed for Shauntay and visited the child on two occasions. Defendant also engaged a Christian Science nurse who attended Shauntay on February 27 and again on March 6 and 8.[2] Shauntay nevertheless lost weight, grew disoriented and irritable during the last week of her illness, and died on March 9 of acute purulent meningitis after a period of heavy and irregular breathing. During the 17 days she lay ill, the child received no medical treatment.

The People charged defendant with involuntary manslaughter and felony child endangerment based on allegations that her criminal negligence proximately caused Shauntay's death. Defendant moved to dismiss the prosecution (Pen.Code, § 995) on the grounds that (1) her conduct was specifically protected by law, and (2) the statutes under which she had been charged

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[1] Members of the Church "believe that disease is a physical manifestation of errors of the mind." (Comment, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer* (1975) 8 Loyola L.A.L.Rev. 396, 397, fn. 7.) The use of medicine is believed to perpetuate such error and is therefore discouraged. (Schneider, *Christian Science and the Law: Room for Compromise?* (1965) 1 Colum.J.L. & Soc.Probs. 81, 87-88.) Nonetheless, "the Church sets up no abstract criteria for determining what diseases or injuries should be treated by prayer or other methods but, rather, leaves such questions to individual decision in concrete instances. . . . If some turn in what they think is an urgent time of need to medical treatment for themselves or their children, they are *not*—contrary to some recent charges—stigmatized by their church." (Talbot, *The Position of the Christian Science Church* (1983) 26 N.E.Med.J. 1641, 1642, italics in original.)

[2] The Church describes in an amicus curiae brief the role of Christian Science practitioners and nurses: "[Christian Science practitioners are] individuals who devote their full time to healing through prayer, or spiritual treatment. These individuals are approved for listing by the Church in *The Christian Science Journal*, after having given evidence of moral character and healing ability. Practitioners determine their own charges, usually from seven to fifteen dollars per day of treatment, and are paid by their patients. . . . The practitioner's work, however, is a religious vocation, a ministry of spiritual healing in its broadest sense. [¶] Christian Scientists may also call upon the services of a Christian Science nurse, who provides such practical care as dressing of wounds for those having spiritual treatment."

failed to provide fair notice that her conduct was criminal. The court denied her motion.

Defendant petitioned the Court of Appeal for a writ of prohibition and a stay. (Pen. Code, § 999a.) The petition and stay request were summarily denied, and defendant petitioned for review in this court. We granted the petition and transferred the matter to the Court of Appeal with directions to issue an alternative writ of prohibition. After further briefing and oral argument, the Court of Appeal again denied defendant's petition. She thereafter filed a second petition for review in this court, which we also granted.

Defendant and amici curiae offer a variety of statutory and constitutional arguments in support of their claim that the prosecution of defendant under Penal Code section 192, subdivision (b) (hereafter section 192(b)), and section 273a, subdivision (1) (hereafter section 273a(1)), is barred as a matter of law. For the reasons set forth below, we reject their contentions and conclude that defendant can be prosecuted as charged.

I. *Statutory Contentions*

A. *Section 270 as a complete defense to prosecution*

Defendant first contends that the provisions of Penal Code section 270 (hereafter section 270) provide a complete defense to any prosecution based on her treatment of Shauntay's illness with prayer rather than medical care. Section 270 enumerates certain necessities that parents must furnish their children and imposes misdemeanor liability for the failure to do so. As enacted in 1872, the statute provided that "Every parent of any child who wilfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attendance for such child, is guilty of a misdemeanor." (Pen.Code (1st ed. 1872) § 270.)

The Legislature amended the provision in 1925 by inserting the phrase "or other remedial care" after "medical attendance." (Stats.1925, ch. 325, § 1, p. 544.) The statute was again amended in 1976 to specify that "treatment by spiritual means through prayer alone" constitutes "other remedial care." (Stats.1976, ch. 673, § 1, p. 1661.)[3]

1.

As a threshold consideration we must ascertain whether prayer treatment constitutes an acceptable substitute for medical care under the terms of section 270, as defendant contends. If it does not, then a fortiori the statute provides no defense to prosecutions under separate manslaughter and child endangerment provisions for the use of prayer in lieu of medicine. This determination hinges on whether "other remedial care," defined in section 270 to include prayer, represents an alternative to "medical attendance" or rather identifies a distinct and additional necessity that parents must provide their children.

In *People v. Arnold* (1967) 66 Cal.2d 438, 452, 58 Cal.Rptr. 115, 426 P.2d 515, we considered the contention that section 270 allows parents to provide children with "an accepted alternative to medical attendance: 'other remedial care,' namely enemas, compresses, and prayer." The case involved the appeal of a mother convicted of misdemeanor-manslaughter after unsuccessfully treating her child's illness with prayer. Although reversing on unrelated grounds, the *Arnold* court summarily re-

[3] The statute thus reads in pertinent part: "If a parent of a minor child wilfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor. . . . [¶] If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute 'other remedial care', as used in this section."

jected in dictum the defendant's interpretation of section 270, reasoning that "The phrase 'other remedial care' . . . does not sanction unorthodox substitutes for 'medical attendance'; it indicates one of the multiple necessities which the parent must provide." (Ibid.)

While the *Arnold* decision predates the 1976 amendment specifying that "other remedial care" includes prayer, the court's reasoning remains fatal to a defense based on treatment by spiritual means: regardless of its content, "other remedial care" constitutes "one of the multiple necessities" under *Arnold*, thus operating in addition to rather than in lieu of the responsibility to furnish medical attendance. Because the 1976 amendment "did not address the contention [in *Arnold*] that other remedial care could not act as a substitute to standard medical treatment," the Court of Appeal in the case at bar concluded that defendant's provision of prayer did not supplant her separate responsibility to furnish medical care under section 270.

Well-settled principles guide our review of the statutory analysis set forth in *Arnold* and embraced by the decision below. " ' "The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law. [Citations.]" ' In determining such intent, the court turns first to the words of the statute. '[W]here . . . the language is clear, there can be no room for interpretation.' " (*Regents of University of California v. Public Employment Bd.* (1986) 41 Cal.3d 601, 607, 224 Cal.Rptr. 631, 715 P.2d 590, citations omitted.)

Section 270 requires that parents "furnish necessary clothing, food, shelter or medical attendance, or other remedial care. . . ." In our view, this language is sufficiently clear to reject the dictum in *Arnold* and conclude that the Legislature intended "other remedial care" to constitute a substitute for "medical attendance." We begin by noting the repetition of

"or" to introduce both "medical attendance" and "other remedial care." The first use of the word, preceding "medical attendance," denotes that clothing, food, shelter, and medical attendance represent distinct necessities each of which must be provided a child; it would be superfluous if the succeeding phrase, "or other remedial care," introduced yet another necessity into the statutory scheme. We have often observed that courts should give significance to every word, phrase, and sentence of an act, and that any construction rendering certain words surplusage should be avoided. (*Palos Verdes Faculty Assn. v. Palos Verdes Peninsula Unified School Dist.* (1978) 21 Cal.3d 650, 659, 147 Cal. Rptr. 359, 580 P.2d 1155.) To give significance to the initial use of the word "or," its second use must be taken to mean that "other remedial care" operates as an alternative to the immediately preceding phrase rather than as an additional necessity appended to the entire sentence in the manner of an afterthought.

The definition of certain pivotal words in the statute bolsters this interpretation. "Remedial" is defined as "affording a remedy: intended for a remedy or for the removal of abatement of a disease or of an evil." (Webster's New Internat. Dict. (3d ed. 1961) p. 1920.) "Remedy," in turn, is defined as "something that relieves or cures a disease: a medicine or application that serves or helps to terminate disease and restore health." (Ibid.) Finally, "other" is defined as "not the same: different." (Id. at p. 1598). When these definitions are substituted for the words of the statute, the provision penalizes parents who fail to provide "clothing, food, shelter or medical attendance, or [different] care [intended to relieve or cure a disease]." It thus is apparent that the Legislature intended "other remedial care" to represent an alternative to medical attendance under the terms of section 270.

Any doubt regarding this interpretation cannot survive examination of the legislative history of the 1976 amendment defin-

ing "other remedial care" to include prayer. When the members of the Assembly considered the amendment, contained in Assembly Bill No. 3843, 1975-1976 Regular Session, they had before them the third reading analysis of the legislation prepared by the Assembly Office of Research. The analysis stated: "Under this bill, the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment. . . ." (Assem. Office of Research, 3d reading analysis of Assem.Bill No. 3843 (1975-1976 Reg. Sess.).) Similarly, the members of the Senate received an analysis of the legislation prepared by either the Republican or Democratic Caucus. Both caucus analyses stated that the amendment would shield from liability those parents who provide prayer in lieu of medical care for their children. (Sen.Democratic Caucus, 3d reading analysis of Assem.Bill No. 3843 (1975-1976 Reg. Sess.); Sen.Republican Caucus, 3d reading analysis of Assem.Bill No. 3843 (1975-1976 Reg. Sess.).) While these materials are not dispositive evidence of legislative intent (*Shippen v. Dept. of Motor Vehicles* (1984) 161 Cal.App.3d 1119, 1126, 208 Cal.Rptr. 13), they are significant insofar as their contents do not contradict the plain language of the statute. (*Commodore Home Systems, Inc. v. Superior Court* (1982) 32 Cal.3d 211, 219, 185 Cal.Rptr. 270, 649 P.2d 912.) We accordingly conclude that section 270 exempts parents who utilize prayer treatment from the statutory requirement to furnish medical care, and overrule *People v. Arnold*, supra, 66 Cal.2d 438, 452, 58 Cal.Rptr. 115, 426 P.2d 515, to the extent it concludes to the contrary.

2.

We next consider whether section 270 bars the prosecution of defendant under the manslaughter and child endangerment statutes. (§§ 192(b), 273a(1).) Again we turn to its plain language for initial guidance. Citing the statutory provision that "treatment by spiritual means through prayer alone . . . shall constitute 'other remedial care', *as used in this section*" (italics added), the Court of Appeal concluded that section 270 expressly precludes any extension of its religious exemption to other statutes. This analysis confuses the statutory limitation on the definition of "other remedial care" with a limitation on possible defenses implied by that definition.

Following the rule of the last antecedent, the phrase "as used in this section" must modify "other remedial care." (See *People v. Baker* (1968) 69 Cal.2d 44, 46, 69 Cal.Rptr. 595, 442 P.2d 675). The language therefore either (1) qualifies the five earlier references to "other remedial care" in the statute, none of which mentions "treatment by spiritual means through prayer alone," or (2) distinguishes the definition of the phrase in section 270 from its use in numerous other statutes, most of which make no reference to treatment by spiritual means. (See, e.g., Code Civ.Proc., § 1209.5; Welf. & Inst. Code, §§ 305, subd. (c), 369, subds. (a)–(g), 625, subd. (c), 739, subds. (a)–(g), 11452, subd. (6), 14059; see also Stats. 1987, chs. 1353, 1485). Neither of these qualifications on the statutory language bears on whether the *defense* implied by the definition of "other remedial care," as used in section 270, should apply to the charges against defendant under sections 192(b) and 273a(1).

Defendant conversely asserts that the plain language of section 270 requires the extension of its religious exemption to her prosecution. She focuses on the reference in the statute to the provision of "*necessary* clothing, food, shelter or medical

attendance or other remedial care. . . ." (Italics added.) Observing that "necessary" is defined, inter alia, as "absolutely required: essential indispensable" (Webster's New Internat. Dict. (3d ed. 1961) p. 1511), she contends that there can be no circumstance involving the illness of a child in which the use of prayer in lieu of medicine is unlawful.

It is true that the statute recognizes "other remedial care" as an acceptable substitute for "medical attendance" when care is "necessary"; however, this conclusion does not address the question whether compliance with the terms of section 270 absolves defendant of liability under all other provisions of the Penal Code. "When used in a statute words must be construed in context, keeping in mind the nature and obvious purpose of the statute where they appear. . . ." (*People v. Black* (1982) 32 Cal.3d 1, 5, 184 Cal.Rptr. 454, 648 P.2d 104; *People v. Alday* (1973) 10 Cal.3d 392, 395, 110 Cal.Rptr. 617, 515 P.2d 1169.) Conduct that is legal in one statutory context thus may be actionable under separate statutes created for different legislative purposes. It follows that the legality of defendant's conduct under the terms of section 270 cannot be read to create a parallel exemption from prosecution under sections 192(b) and 273a(1) unless the statutes reflect some shared legislative objective.[4] (*Milligan v. City of Laguna Beach*

[4]This analysis reflects the rule that different statutes should be construed together only if they stand in pari materia. "Statutes are considered to be in pari materia when they relate to the same person or thing, to the same class of person or thing, or have the same purpose or object. Characterization of the object or purpose is more important than characterization of subject matter in determining whether different statutes are closely enough related to justify interpreting one in light of the other. It has been held that where the same subject is treated in several acts having different objects the statutes are not in pari materia. "The adventitious occurrence of . . . similar subject matter, in laws enacted for wholly different ends will normally not justify applying the rule.' " (2A Sutherland, Statutory Construction (4th rev. ed. 1984) § 51.03, p. 467, citations and fns. omitted.) Even if statutes stand in pari materia, "each retains its independence and a violation of one is not necessarily a violation of the other." (Id. at p. 468.) Similarly, a defense to one is not necessarily a defense to the other.

(1983) 34 Cal.3d 829, 835, 196 Cal.Rptr. 38, 670 P.2d 1121; see also *People v. Caudillo* (1978) 21 Cal.3d 562, 585, 146 Cal.Rptr. 859, 580 P.2d 274; Pen.Code, § 4.) We turn to the purpose of section 270.

"Rather than punishment of the neglectful parents, the principal statutory objectives [of section 270] are to secure support of the child and to protect the public from the burden of supporting a child who has a parent able to support him." (*People v. Sorensen* (1968) 68 Cal.2d 280, 287, 66 Cal.Rptr. 7, 437 P.2d 495.) The provision is "designed to supplement civil statutes for effective enforcement of child support obligations." (Note, *Criminal Nonsupport and a Proposal for an Effective Felony-Misdemeanor Distinction* (1986) 37 Hastings L.J. 1075, 1079; *County of Ventura v. George* (1938) 149 Cal.App.3d 1012, 1015, 197 Cal.Rptr. 245.) A parent thus may comply with the requirements of the statute simply by providing financial assistance to another individual with physical custody of the child. (*Lyons v. Municipal Court* (1977) 75 Cal.App.3d 829, 843, 142 Cal.Rptr. 449.) A parent who is financially incapable of furnishing support, without fault, is likewise excused from compliance. (*People v. Sorensen*, supra, 68 Cal.2d at p. 287, 66 Cal.Rptr. 7, 437 P.2d 495.) Indeed, the dispositional section of the statutory scheme explicitly contemplates protection of the fisc by stipulating that "If the children are receiving public assistance, all fines, penalties or forfeitures imposed and all funds collected from the defendant [for violations of section 270 or section 270a] shall be paid to the county department. Money so paid shall be applied first to support . . . and any balance remaining shall be applied to future needs, or be treated as reimbursement for past support furnished from public assistance funds." (Pen.Code, § 270d; see *People v. Sorensen*, supra, 68 Cal.2d at p. 287, 66 Cal.Rptr. 7, 437 P.2d 495.)

Disputing this settled understanding of section 270 as a fiscal support provision, defendant asserts that the objective of the statute is to protect children from serious injury rather than to secure certain routine necessities at parental expense.[5] She argues that her interpretation is supported by the notes of the Code Commission of 1870-1872. We will consider the code commissioners' notes when they do not conflict with other persuasive evidence of legislative intent and particularly "'where the commission's comment is brief, because in such a situation there is ordinarily strong reason to believe that the legislators' votes were based in large measure upon the explanation of the commission proposing the bill.'" (*Keeler v. Superior Court* (1970) 2 Cal.3d 619, 630, 87 Cal.Rptr. 481, 470 P.2d 617, quoting *Van Arsdale v. Hollinger* (1968) 68 Cal.2d 245, 249-250, 66 Cal.Rptr. 20, 437 P.2d 508.) The explanatory note for section 270 reads: "Consult the Civil Code for the provisions reported defining the duty of parental support. As to the criminality of a willful omission to perform this duty.—See *Reg. vs. Chandler* [(1855) 6 Cox Crim.Cas. 519], *Reg. v. Gray* [(1857) 7 Cox Crim.Cas. 326], *Reg. vs. S*_____ [(1851) 5 Cox Crim.Cas. 279], *Reg. vs. Philpot[t]* [(1853) 6 Cox Crim.Cas. 140]." (Code comrs. note, Pen. Code (1st ed. 1872) p. 117.) Because the note says nothing regarding the purpose of the statute, any construction of legislative intent resting on its contents requires the implausible assumption that

[5] Defendant acknowledges that the dispositional provisions of section 270d substantiate the contrary conclusion reached by this court in *Sorensen*. She maintains that section 270d should be ignored because it was added to the Penal Code after the original passage of section 270. Her contention contradicts the established principle that in construing a statute to discern its purpose, its provisions should be read together "so that all may be harmonized and have effect." (*Moore v. Panish* (1982) 32 Cal.3d 535 541, 186 Cal.Rptr. 475, 652 P.2d 32.) The sequence of enactment of particular sections in a statute bears on its construction only when two provisions stand in irreconcilable conflict; in that event, the terms of the *later* prevail. (*City of Petaluma v. Pacific Telephone and Telegraph* (1955) 44 Cal.2d 284, 288, 282 P.2d 43.)

the legislators sought out and read the four English common law cases cited therein and then conformed their understanding of the statute to the reasoning of those opinions.

Yet even if we were to so assume, the cases fail to substantiate defendant's interpretation. She emphasizes that each involved allegations of a child suffering physical injury as a result of a parent's failure to provide basic necessities, and asserts that child endangerment was thus the harm to be averted by imposition of criminal liability. To the contrary, the first case cited in the code commission note held that a mother could not be found guilty of neglecting to feed her child when she had lacked the financial means to do so, even though public assistance had been available to otherwise provide for the starving child. "It is admitted in the case that there was no evidence of her having the means; that being admitted, it is no answer to say that she might have procured the means by applying to the relieving officer." (*Reg. v. Chandler*, supra, 6 Cox Crim.Cas. at p. 520.) This disposition suggests that failure to provide financial support, rather than injury per se, was the gravamen of the common law crime. Indeed, the continued existence under section 270 of a complete defense for parents who lack without fault the means of support significantly distinguishes the misdemeanor provision from sections 192(b) and 273a(1), which recognize no insolvency exception to felony charges stemming from severe neglect.

We thus reaffirm our determination in *Sorensen*, supra, 68 Cal.2d 280, 66 Cal.Rptr. 7, 437 P.2d 495, that section 270 requires able parents to furnish certain routine necessities for their children so that the public need not unnecessarily assume that obligation. (See also *Davis v. Stroud* (1942) 52 Cal.App.2d 308, 315, 126 P.2d 409.) While certainly reflecting concern for the general welfare of children, the fiscal objectives of this support provision are so manifestly distinguishable from the

specific purposes of the involuntary manslaughter and felony child-endangerment statutes—designed to protect citizens from immediate and grievous bodily harm—that section 270 cannot be read to create express exemptions from prosecution under those separate provisions as a matter of parallel construction. The Legislature has determined that the provision of prayer is sufficient to avert misdemeanor liability for neglecting one's financial responsibility to furnish routine child support. This hardly compels the conclusions that in so doing the Legislature intended to create an unqualified defense to felony manslaughter and child endangerment charges for those parents who continue to furnish prayer alone in the rare instance when a gravely ill child lies dying for want of medical attention.[6]

In the absence of support from the plain language and purpose of section 270, defendant points to the legislative history of certain amendments to the statute as evidence of an intent to exempt prayer treatment from the reach of sections 192(b) and 273a(1). She specifically contends that the 1925 and 1976 amendments to section 270 were enacted to bar manslaughter prosecutions against Christian Scientists. With respect to the 1925 amendment, which added the phrase "or other remedial care" to the statute, defendant rests her account of its legislative history on certain descriptive passages contained in the 1920 and 1925 annual reports of the Christian Science Committee on Publication for Southern California. She is not well served

[6] This conclusion disposes of defendant's separate contention that both section 270 and section 273a(1) address the same object—child endangerment—and therefore that she must be charged under the provision more specifically encompassing her conduct. (See *In re Williamson* (1954) 43 Cal.2d 651, 654, 276 P.2d 593.) Because we have determined that section 270 is not intended to protect children from life-threatening bodily harm but rather focuses on the procurement of their routine support, the doctrine does not apply. (*People v. Jenkins* (1980) 28 Cal.3d 494, 502, 170 Cal.Rptr. 1, 620 P.2d 587.) Indeed, it would be a bizarre result if parents who starve their children nearly to death by failing to furnish food could be prosecuted for no more than a misdemeanor violation of section 270.

by these materials. First, the documents are so removed from the legislative process that any construction of the statute based on their contents would be patently unreliable. Second, even if we were to consider the reports, they provide virtually no support for her contention.[7]

Defendant next contends that the 1976 amendment identifying prayer treatment as a form of "other remedial care" was similarly intended to shield Christian Scientists from manslaughter prosecutions. She observes that the amendment was sponsored by the Church in response to our dictum in *Arnold*, a case involving a misdemeanor-manslaughter prosecution. While legislative materials demonstrate that the amendment was indeed sponsored by the Church in response to *Arnold*, there is no evidence that the Legislature intended the modification to affect manslaughter, as opposed to misdemeanor, liability. (See Sen. Com. on Judiciary, Analysis of Assem.Bill No. 3843 (1975–1976 Reg.Sess.); Sen.Republican Caucus, 3d reading analysis of Assem.Bill No. 3843, supra.) The portion of the *Arnold* opinion cited in the legislative materials as

[7] Defendant posits a causal relationship between a misdemeanor-manslaughter prosecution detailed in the 1920 report and the 1925 amendment to section 270, briefly extolled in the latter report. However, the cited passage of the 1925 report simply recites the language of the amendment and terms the legislation "a forward step. . . ." No mention is made of any relationship between the amendment and manslaughter liability in general nor the specific manslaughter prosecution discussed in the earlier report. In an attempt to forge the missing causal link, defendant disingenuously observes that ion "a [misdemeanor-manslaughter] case cited in those . . . materials," a judge purportedly ruled from the bench that prayer is "a legal, lawful means of healing disease in the State of California as contemplated by Section 270 or any other section of the laws of the State of California. . . ." On the basis of this ruling, defendant concludes that the 1925 legislation had afforded "a parent who provides his/her child with treatment by prayer as an alternative to medical attendance with a complete statutory defense to *manslaughter* charges. . . ." (Italics in original.) What defendant fails to note is that the discussion of the ruling appeared in the 1920 annual report. The case therefore predated the 1925 amendment by at least five years, obviously lends nothing to its interpretation, and was flatly erroneous in light of the language of section 270 existing prior to 1925, which recognized no substitute for the provision of medical attendance. (See Pen.Code (1st ed. 1872) § 270.)

inspiring the amendment focused exclusively on the underlying misdemeanor liability of the parent; none of the documents mentions the relationship between the discussion of section 270 in *Arnold* and the manslaughter charge elsewhere involved in the case. (Ibid.) While the ensuing amendment necessarily precluded misdemeanor-manslaughter prosecutions based on violations of section 270 by eliminating misdemeanor liability under that statute, the Legislature left untouched the possibility of an involuntary manslaughter prosecution based as here on allegations of criminal negligence in the "commission of a lawful act which might produce death, in an unlawful manner. . . ." (Pen.Code;, § 192, subd. (b).)[8]

The historical materials documenting the enactment of Assembly Bill No. 3843 demonstrate that the members of the Legislature were well aware the legislation left open the possibility of manslaugher and child endangerment prosecutions, but simply declined to extend their amendatory efforts beyond section 270. A staff analysis prepared for the Assembly Committee on Criminal Justice observed that "The bill appears unclear in two respects. First, Section 273a makes it a wobbler (10 year top) for any person to permit a minor under his care or custody to suffer any physical harm or injury. Thus, though the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment, they would be liable if the child suffered any physiological harm. Second, no exception is made under the manslaughter statutes for parental lia-

[8] Section 192(b) defines involuntary manslaughter as the unlawful killing of a human being without malice "in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution or circumspection." The information charging defendant with manslaughter alleges that she killed her daughter "without malice but in the commission of a lawful act which might produce death in an unlawful manner and without due caution and circumspection."

bility should the child die. If treatment by prayer is to be recognized in part, the parents should not be liable for the results of using a permitted mode of healing." (Assem. Com. on Criminal Justice, Analysis of Assem.Bill No. 3843 (1975-1976 Reg.Sess.).) Despite the opinion offered in the final sentence of the staff anaylsis, no amendments were made to eliminate potential liability under sections 192(b) and 273a(1). The committee passed the bill on April 29, 1976.

When the full Assembly considered the legislation on May 6, 1976, its members had before them the third reading analysis of the bill prepared by the Assembly Office of Research. This analysis incorporated, nearly verbatim, the observations regarding manslaughter and child endangerment liability contained in the earlier analysis prepared for the Criminal Justice Committee. (Assem.Office of Research, 3d reading analysis of Assem.Bill No. 3843, supra.) Again, no amendments were offered in response to the observations. The bill passed and moved to the Senate.

The Senate Committee on Judiciary received a four-page analysis of the legislation. Under the heading "Comment" and entirely capitalized, unlike any other portion of the document, were the following questions: "Do the provisions of this bill conflict with section 273a of the Penal Code which makes it a crime for any person to wilfully cause or permit a minor under his care or custody to suffer any physical harm or injury? [¶] Might a parent be immune from liability for failure to provide for the health of the child because they [*sic*] choose treatment by prayer rather than common medical treatment, but incur liability if the child suffers any harm?" (Sen.Com. on Judiciary, Analysis of Assem. Bill No. 3843, supra, capitalization omitted.) As in the Assembly, the Senate committee members chose to disregard the issues raised so prominently in their staff analysis and passed the measure to the full Senate without addressing manslaughter and child endangerment lia-

bility. No other reference to sections 192(b) and 273a(1) appears in the historical materials documenting the enactment of Assembly Bill No. 3843.

The ineluctable conclusion we must draw from these materials is that the members of the Legislature were fully conscious of the potential liability remaining under sections 192(b) and 273a(1) for conduct they had legalized with respect to section 270, but simply chose to leave the matter unaddressed. Needless to say, considered silence is an insufficient basis to infer that the Legislature, by amending a misdemeanor support provision, actually exempted from felony liability all parents who offer prayer alone to a dying child. "The failure of the Legislature to change the law in a particular respect when the subject is generally before it and changes in other respects are made is indicative of an intent to leave the law as it stands in the aspects not amended." (*Cole v. Rush* (1955) 45 Cal.2d 345, 355, 289 P.2d 450, disapproved on another point in *Vesely v. Sager* (1971) 5 Cal.3d 153, 167, 95 Cal.Rptr. 623, 486 P.2d 151.). The plain language, purpose, and legislative history of section 270 thus fail to establish a discernible legislative intent to exempt prayer treatment, as a matter of law, from the reach of the manslaugher and felony child-endangerment statutes. (Accord, Note, *California's Prayer Healing Dilemma* (1987) 14 Hastings Const.L.Q. 395, 401–401.)

B. *Expressions of legislative intent in related statutes*

Defendant next contends that an intent to exempt prayer treatment from conduct within the reach of sections 192(b) and 273a(1) is implied by a number of other civil and criminal measures relating to the provision of prayer in lieu of medical care to children. She first cites a plethora of statutes exempting prayer practitioners and their facilities from medical licensure

requirements[9] or variously accommodating individuals who choose to rely on such treatment for their own care.[10] These accommodative provisions, however, evince no legislative sanction of prayer for the treatment of children in life-threatening circumstances.

More useful are statutes dealing with the definition of neglected or abused children for purposes of the state's child welfare services program (Welf. & Inst.Code, § 16500 et seq.), the activities of the Office of Child Abuse Prevention (id. § 18950 et seq.), and a criminal provision requiring certain individuals to report instances of suspected child abuse (Pen.Code, § 11165 et seq.). Utilizing substantially similar language, each of these three statutes provides that children receiving treatment by prayer shall not "for that reason alone" be considered abused or neglected for its purposes. (Welf. & Inst.Code, §§ 16059.1 (hereafter W & I section 16509.1) and 18950.5 (hereafter W & I section 18950.5); Pen.Code, § 11165.2 (hereafter section 11165.2).) Defendant cites these provisions as evidence that the Legislature does not consider prayer treatment to be a threat to the health of children, and thus that the imposition of criminal liability for the results of its use is inconsistent with legislative intent.

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[9] See, e.g., Business and Professions Code sections, 2063, 2731, and 2789; Health and Safety Code sections 430.8, 1270, 1505; subdivision (f), 1569.145, subdivision (c), 1569.31, 1709, 1738. As we long ago observed, the exemption of spiritual practitioners from licensure requirements simply reflects the fact that those who rely on spiritual care understand that its effectiveness is independent of the knowledge and skills which the licensing statutes seek to assure in those who represent themselves to the public as physicians. (*People v. Jordan* (1916) 172 Cal. 391, 400, 156 P. 451; see also Comment, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer*, supra, 8 Loyola L.A.L.Rev. at p. 399, fn. 12.)

[10] See, e.g., Welfare and Institutions Code sections 7104, 14004, 14059, and 14132, subdivision (a); Education Code section 44978; Unemployment Insurance Code sections 2627.5, subdivision (c)(4), and 2709.

The Attorney General urges a different construction of the statutory language. He contends that the phrase "for that reason *alone*" (italics added) denotes that a child receiving prayer treatment can still fall within the reach of the statutory definitions if the provision of such treatment, coupled with a grave medical condition, combine to pose a serious threat to the physical well-being of the child.[11] While defendant contends the phrase merely indicates that a child receiving prayer treatment can come within the purview of the statutes for other reasons, her construction renders the use of the word "alone" surplusage and thus must be rejected under the rule that " 'every word, phrase and provision employed in a statute is intended to have meaning and perform a useful function. . . .' " (*White v. County of Sacramento* (1982) 31 Cal.3d 676, 681, 183 Cal.Rptr. 520, 646 P.2d 191, quoting *Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 233, 273 P.2d 5.)

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[11] The Attorney General's interpretation duplicates an earlier construction of precisely the same words offered from a surprising quarter: the Christian Science Church. The Church-sponsored legislation containing the 1976 amendment to section 270 originally included an additional amendment to section 600 (now section 300) of the Welfare and Institutions Code, which sets forth the circumstances under which children can be declared dependents of the court and taken from their parents. The amendment, deleted from the legislation prior to its passge, provided that "No child who in good faith is under treatment solely by spiritual means through prayer alone . . . shall, *for that reason alone*, be considered a person described by Section 600." (Assem.Bill No. 3843 (1975–1976 Reg.Sess.), as introduced Mar. 17, 1976, italics added.) When the Director of the Department of Health questioned whether the amendment would bar children receiving prayer treatment from being declared dependents even if their health became endangered, the Christian Science official sponsoring the legislation gave the following response in a letter dated June 16, 1976: "The general counsel for the Christian Science Committee on Publication for Southern California . . . gave us his considered opinion that [the amendment] does not preclude the court's taking custody of a minor if the [prayer treatment] is not effective. It only says to the court that it cannot take a child into custory *for the sole reason* that he is being furnished accredited Christian Science treatment." (Italics in original.) The Church official reiterated his analysis in a letter to Senator Carpenter on the same day: "[T]he court can't take a child away from a parent *solely because* he's having accredited Christian Science treatment in lieu of medical. Of course, the bill doesn't say that the child can't be taken *if* the treatment should not be effective." (Italics in original.)

The code section immediately preceding W & I section 16509.1, in the child welfare services chapter strongly corroborates the interpretation offered by the Attorney General. That section reads: "Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child." (Welf. & Inst. Code, § 16509 (hereafter W & I section 16509).) It is fundamental that "the language of a particular code section must be construed in light of and with reference to the language of other sections accompanying it and related to it with a view to harmonizing the several provisions and giving effect to all of them." (*Johnson v. Superior Court* (1984) 159 Cal.App.3d 573, 582, 205 Cal.Rptr. 605.) The provision of prayer treatment in lieu of medical care to a gravely ill child doubtless constitutes a religious child-rearing practice "which differ[s] from general community standards. . . ." Nor is there any question that W & I sections 16509 and 16509.1 are related and intended to express a unified statutory objective. To harmonize their provisions accordingly, the use of the word "alone" in W & I section 16509.1 must be construed to signify that treatment by prayer will not constitute neglect for purposes of the child welfare services chapter except in those instances when such treatment, coupled with a sufficiently grave health condition, present "a specific danger to the physical . . . safety of the child."[12]

[12] The Colorado Supreme Court has reached the same conclusion with respect to nearly identical statutory language: "In our view, the meaning of the statutory language, 'for that reason alone,' is quite clear. It allows a finding of . . . neglect for other 'reasons,' such as where the child's life is in imminent danger, despite any treatment by spiritual means. In other words, a child who is treated solely by spiritual means is not, for that reason alone, . . . neglected, but if there is an additional reason, such as where the child is deprived of medical care necessary to prevent a life-endangering condition, the child may be adjudicated . . . neglected under the statutory scheme." (*People In Interest of D.L.E.* (Colo. 1982) 645 P.2d 271, 274-275.

While section 11165.2 and W & I section 18950.5 lack similar companion provisions, there are persuasive reasons why we should interpret them in the same manner. First, each employs the words "for that reason alone" in a context identical to the use of the phrase in W & I section 16509.1. Identical language appearing in separate provisions dealing with the same subject matter should be accorded the same interpretation. (*Ford Dealers Assn. v. Dept. of Motor Vehicles* (1982) 32 Cal.3d 347, 359, 185 Cal.Rptr. 453, 650 P.2d 328.) Because each statute deals with the relationship of prayer treatment to the definition of child neglect or abuse, we are obliged to construe their shared language in a consistent fashion. (*Dieckmann v. Superior Court* (1985) 175 Cal.App.3d 345, 356, 220 Cal.Rptr. 602.) Second, both section 11165.2 and W & I section 18950.5 explicitly refer to the language of W & I section 16509.1 to define the conduct excepted from their definitions of neglect and abuse.[13] This fact further suggests that the Legislature intended the several statutes to share a common meaning.

Finally, the most telling indication that the statutes should be construed together in the manner urged by the Attorney General is their mutual interrelation with the child dependency provisions of Welfare and Institutions Code section 300 (here-

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[13] W & I section 18950.5 reads: "For the purposes of . . . [the Office of Child Abuse Prevention] chapter, a child receiving treatment by spiritual means as provided in [section 16509.1] of the Welfare and Institutions Code shall not for that reason alone be considered an abused or neglected child." (W & I section 18950.5 actually cites former section 16508 of the Welfare and Institutions Code, where the language of W & I section 16509.1 was previously codified in nearly identical terms prior to a 1982 amendment that renumbered the provisions of the child welfare services chapter. (Stats.1982, ch. 978, § 62.) The reference in W & I section 18950.5 to the superseded code section was apparently overlooked at the time of the 1982 amendment.)

Section 11165.2 reads in pertinent part: "For the purposes of this chapter, a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code . . . shall not for that reason alone be considered a neglected child."

after W & I section 300). Furnishing the state with its most powerful tool to intercede on behalf of children threatened at the hands of their parents, W & I section 300 delineates the circumstances under which a child can be removed from parental custody and declared a dependent of the court. Section 11165.2 and W & I sections 16509.1 and 18950.5 are each components of separate acts connected in some significant fashion to the child dependency proceedings outlined in W & I section 300. In sum, the three acts (1) require that suspected instances of child abuse or neglect be reported to the agency responsible for initiating child dependency proceedings under W & I section 300 (Pen.Code, § 11166, subds. (a), (b), & (g)); (2) provide services to neglected or abused children identified through dependency proceedings (Welf. & Inst. Code, §§ 16506, subd. (a), 16507, 16508, subd. (a)); and (3) fund child-abuse prevention projects in cooperation with local welfare agencies responsible for supervising dependency proceedings (Welf & Inst. Code, § 18964, subd. (f)(3)). This intimate interrelation of statutory objectives, revolving around the identification and enforcement provisions of W & I section 300, counsels us to interpret the language of the related acts with reference to the provisions of the dependency statute to "achieve a uniform and consistent legislative purpose." (*Isobe v. Unemployment Insurance Appeals Bd.* (1974) 12 Cal.3d 584, 591, 116 Cal.Rptr. 376, 526 P.2d 528; *People v. Caudillo*, supra, 21 Cal.3d 562, 585, 146 Cal.Rptr. 859, 580 P.2d 274.)

On September 30, 1987, the Governor signed into law Senate Bill No. 243, 1987–1988 Regular Session, which revised W & I section 300 in its entirety. (Stats.1987, ch. 1485, § 4, Deering's Adv.Legis.Service, pp. 5779–5780.) Although the legislation will not take effect until January 1, 1989, its provisions dealing with the relationship of prayer treatment to dependency proceedings are critically significant to our interpretive

task insofar as they represent the Legislature's most recent and detailed articulation of the protection to be assured seriously ill children receiving such care.

Newly amended W & I section 300 provides in pertinent part: "Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court. . . . [¶] (b) The minor has suffered, or there is substantial risk that the minor will suffer, serious physical harm or illness, . . . by the willful or negligent failure of the parent . . . to provide the minor with adequate food, clothing, shelter, or medical treatment. . . . Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's . . . willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's . . . medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof and shall not assume jurisdiction *unless necessary to protect the minor from suffering serious physical harm or illness*." (Italics added.)

Thus in any circumstance involving the threat of "serious physical harm or illness," the Legislature has empowered the juvenile court to intercede and assume custody for the express purpose of assuring medical care for a child whose parent is furnishing spiritual treatment by prayer alone. The expression of legislative intent is clear: when a child's health is seriously jeopardized, the right of a parent to rely exclusively on prayer must yield. This intent is implicit in the enumeration of necessities a parent must furnish to avert a dependency proceeding under W & I section 300; conspicuously absent from the list is any substitute for adequate medical treatment. It follows that the only tenable construction of the related provisions

defining the relationship of prayer treatment to child neglect or abuse is the analysis offered by the Attorney General.

While dependency proceedings are civil rather than criminal, their relevance to our inquiry is plain. Parents possess a profound interest in the custody of their children. (*In re Carmaleta B.* (1978) 21 Cal.3d 482, 489, 146 Cal.Rptr. 623, 579 P.2d 514; *Holt v. Superior Court* (1960) 186 Cal.App.2d 524, 526–527, 9 Cal.Rptr. 353). "Custody embraces the sum of parental rights with respect to the rearing of a child, including its care. It includes . . . the right to direct his activities and make decisions regarding his care and control, education, health, and religion." (*Burge v. City and County of San Francisco* (1953) 41 Cal.2d 608, 617, 262 P.2d 6.) The United States Supreme Court has termed this constellation of parental interests "essential" (*Meyers v. Nebraska* (1923) 262 U.S. 390, 399, 43 S.Ct. 625, 626, 67 L.Ed. 1042), among the "basic civil rights of man" (*Skinner v. Oklahoma* (1942) 316 U.S. 535, 541, 62 S.Ct. 1110, 1113, 86 L.Ed. 1655), and "rights far more precious . . . than property rights" (*May v. Anderson* (1953) 345 U.S. 528, 533, 73 S.Ct. 840, 843, 97 L.Ed. 1221). Consistent with the gravity of the prerogative at stake, parents involved in W & I section 300 proceedings are assured notice and a due process hearing (*In re Robert P.* (1976) 61 Cal.App.3d 310, 318, 132 Cal.Rptr. 5) while those who are indigent receive appointed counsel (*In re Christina H.* (1986) 182 Cal.App.3d 47, 49, 227 Cal.Rptr. 41; Cal.Rules of Court, rules 1334(c), 1363(c)). The Legislature's willingness to intrude on a parental interest of such magnitude to assure that children receiving prayer treatment are spared serious physical harm certainly evinces no contrary intent with respect to the application of the penal laws, which in significant respects constitute a less intrusive method of advancing the state's paramount interest in the protection of its children.

Defendant's argument by analogy to civil neglect and dependency provisions therefore corroborates rather than refutes our previous determination that the Legislature has created no exemption under sections 192(b) and 273a(1) for parents who are charged with having killed or endangered the lives of their seriously ill children by providing prayer alone in lieu of medical care. The legislative design appears consistent: prayer treatment will be accommodated as an acceptable means of attending to the needs of a child only insofar as serious physical harm or illness is not at risk. When a child's life is placed in danger, we discern to intent to shield parents from the chastening prospect of felony liability.

C. *Defendant's conduct and the standard for criminal culpability.*

Taking a wholly different tack, defendant next contends that she cannot be convicted under either the manslaughter or felony child-endangerment statutes regardless of the availability of a religious exemption. She rests this contention on a claim that the People will be unable to prove the degree of culpability necessary to convict her under either provision, both of which require criminal negligence in the commission of an offending act. (*People v. Penny* (1955) 44 Cal.2d 861, 879, 285 P.2d 926; *People v. Peabody* (1975) 46 Cal.App.3d 43, 47, 119 Cal.Rptr. 780.) We have defined criminal negligence as " 'aggravated, culpable, gross, or reckless, that is, the conduct of the accused must be such a departure from what would be the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences. . . . [Such negligence] is ordinarily to be determined pursuant to the general principles of negligence, the fundamental of which is knowledge, actual

or imputed, that the act of the slayer tended to endanger life.' " (*People v. Penny*, supra, 44 Cal.2d at pp. 879–880, 285 P.2d 926.) Defendant makes two arguments for the claim that her conduct cannot, as a matter of law, constitute such negligence.

She first contends that the defenses recognized at English common law are available to her under Civil Code section 22.2, which reads: "The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, is the rule of decision in all the courts of this State." She cites two English cases from the 19th century in support of the proposition that the common law recognized treatment by prayer in lieu of medicine as legally insufficient to constitute criminal negligence.[14] While we note that common law defenses, with limited exceptions, are unavailable in California (*Keeler v. Superior Court*, supra, 2 Cal.3d at pp. 631–632, 87 Cal. Rptr. 481, 470 P.2d 617), we need to look no further than the cases themselves to dispose of defendant's contention.

The opinion of the court in *Regina v. Wagstaffe* (Cen.Crim.Ct.1868) 10 Cox.Crim.Cas. 530, consists of a vaguely worded jury charge. The court instructed the jury that criminal negligence "was a very wide question. . . . At different times people had come to different conclusions as to what might be done with a sick person. . . . [A] man might be convicted of manslaughter because he lived in a place where all the community was of a contrary opinion, and in another he might be acquitted because they were all of his opinion. . . ." (Id. at p. 532.) The court asked rhetorically whether

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[14] Although more than a century old, the cases represent the last word of the English courts on the common law question of criminal negligence in such circumstances. Parliament therafter passed the Poor Law Amendment Act of 1868 imposing a statutory duty on parents to provide their children with medical care. (Trescher & O'Neill, *Medical Care for Dependent Children: Manslaughter Liability of the Christian Scientist* (1960) 109 U.Pa.L.Rev. 203, 206–207.)

it was "intended by God Almighty that persons should content themselves by praying for His assistance, without helping themselves, or resorting to such means as were within their reach for that purpose?" (ibid.), and concluded with the observation that the defendants appeared sincere and affectionate. Although the defendants were subsequently acquitted, the fact that the jury itself resolved the question of criminal negligence negates the claim that the court in *Wagstaffe* recognized a legal defense to the charge. Furthermore, its jury instructions merely restated the principle that criminal negligence is a question of fact to be determined in light of contemporary community standards, which at the time made the particular question a close one.

The second case cited by defendant makes this point quite clearly. In *Regina v. Hines* (1874) 80 Cent.Crim.Ct. 309, the court dismissed an indictment for manslaughter against a parent who had exclusively prayed for an ill child.[15] Although the court ruled that the conduct was not criminally negligent as a matter of law, to state the holding is to refute its application 114 years later: the court considered and rejected the proposition that a parent who treated a child by spiritual care "instead of calling in a doctor to apply blisters, leeches, and calomel," was guilty of criminal negligence. (Id. at p. 312.) Were blisters, leeches and calomel the medical alternative to prayer today, quite likely defendant's reliance on *Hines* would more fully resonate with this court. Medical science has advanced dramatically, however, and we may fairly presume that the community standard for criminal negligence has changed accordingly. Nineteenth-century English common law thus fails to establish

[15] While this decision postdates the passage of the Poor Law Amendment Act of 1868, the court apparently disregarded the statute and applied common law principles. (Trescher & O'Neill, op. cit. supra, 109 U.Pa.L.Rev. at p. 206.)

a defense, as a matter of law, to charges arising today for criminal negligence in the death of a child treated by prayer alone.[16]

Defendant next contends that her actions are legally insufficient to constitute criminal negligence under the definition of that conduct established in the decisions of this court. Emphasizing her sincere concern and good faith in treating Shauntay with prayer, she claims that her conduct is incompatible with the required degree of culpability. Defendant does not dispute, however, that criminal negligence must be evaluated objectively. (*People v. Watson* (1981) 30 Cal.3d 290, 296–297, 179 Cal.Rptr. 43, 637 P.2d 279; *People v. Penny*, supra, 44 Cal.2d 861, 880, 285 P.2d 926.) The question is whether "a reasonable person in defendant's position would have been aware of the risk involved. . . ." (*People v. Watson*, supra, 30 Cal.3d at p. 296, 179 Cal.Rptr. 43, 637 P.2d 279.) If so, "defendant is presumed to have had such an awareness." (Ibid.)

The significance of this principle was well illustrated in *People v. Burrough* (1984) 35 Cal.3d 824, 201 Cal.Rptr. 319, 678 P.2d 894, a case involving a "self-styled 'healer' " who provided " 'deep' abdominal massages" to a leukemic who thereafter died of a massive abdominal hemorrhage. (Id. at pp. 826, 828, 201 Cal.Rptr. 319, 678 P.2d 894.) We observed that "There is no allegation made, nor was there any evidence adduced at trial, that [the defendant] at any time harbored any intent even to harm [the victim] in the slightest fashion." (Id. at p. 834, 201 Cal.Rptr. 319, 678 P.2d 894.) "Indeed, nowhere is it claimed that defendant attempted to perform any action with respect to [the victim] other than to heal him. . . ." (Id. at

[16] We note that in the one other English case apparently decided under the common law, a parent was convicted of unlawfully neglecting to provide medical aid after praying for an ailing child. (*Reg. v. Hurry* (1872) 76 Cent.Crim.Ct. 63; see Trescher & O'Neill, op. cit. supra, 109 U.Pa.L.Rev. at p. 206, fn. 16.)

p. 833, 201 Cal.Rptr. 319, 678 P.2d 894.) Nonetheless, we determined that the defendant could be charged with criminally negligent involuntary manslaughter. (Id. at p. 836, 201 Cal.Rptr. 319, 678 P.2d 894.) The relevant inquiry, then, turns not on defendant's subjective intent to heal her daughter but on the objective reasonableness of her course of conduct.[17]

In view of this standard, we must reject defendant's assertion that no reasonable jury could characterize her conduct as criminally negligent for purposes of sections 192(b) and 273a(1). As the court in *People v. Atkins* (1975) 53 Cal.App.3d 348, 125 Cal.Rptr. 855, observed in affirming the involuntary manslaughter and felony child-endangerment conviction of a parent whose child died for want of medical care, criminal negligence "could have been found to have consisted of the [mother's] failure to seek prompt medical attention for [her son], rather than waiting several days. There is evidence she knew, or should have known, that [her son] was seriously injured. . . . Viewing [the evidence] in the light most favorable to the prosecution, there is substantial evidence here of involuntary manslaughter based on the lack of due caution and circumspection in omitting to take a child to a doctor." (Id. at p. 360, 125 Cal.Rptr. 855.) When divorced of her subjective intent, the alleged conduct of defendant here is essentially indistinguishable.

Defendant's arguments to the contrary are not persuasive. She first asserts that the various statutory exemptions enacted for Chrisitian Scientists demonstrate a legislative acceptance of the reasonableness of their spiritual care that is incompatible with a finding of "gross, culpable, or reckless" negligence.

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[17] Compare LaFave and Scott's comment that "an honest belief that prayer is a better cure than medicine, that Providence can heal better than doctors, might serve to negative the awareness of risk which is required for manslaughter in those states which use a *subjective* test of criminal negligence." (LaFave & Scott, Criminal Law (1972) p. 590, fn. 23, italics added.)

As discussed at length above, however, California's statutory scheme reflects not an endorsement of the efficacy or reasonableness of prayer treatment for children battling life-threatening diseases but rather a willingness to accommodate religious practice when children do not face serious physical harm. Indeed, the relevant statutes suggest that prayer treatment for gravely ill children is sufficiently *unreasonable* to justify the state in taking the draconian step of depriving parents of their rights of custody. (Ante, at pp. 14–15 of 253 Cal.Rptr., at pp. 265–266 of 763 P.2d.)

The two cases cited by defendant in support of her claim are clearly distinguishable. In *People v. Rodriguez* (1960) 186 Cal.App.2d 433, 8 Cal.Rptr. 863, the court reversed the involuntary manslaughter conviction of a mother who had left her children alone at home where one died in a fire. The court ruled that the mother's conduct did not reflect a course of conduct sufficiently reckless to justify a finding of criminal negligence. (Id. at pp. 440–441, 8 Cal.Rptr. 863.) In terms of unreasonableness, however, the failure of defendant to seek medical attention for a child who sickened and died over a 17–day period is plainly more egregious than the decision of Mrs. Rodriguez to leave her children alone at home for an afternoon. In *Somers v. Superior Court* (1973) 32 Cal.App.3d 961, 108 Cal.Rptr. 630, the court granted a writ of prohibition barring the manslaughter prosecution of a police officer who had shot a fleeing youth whom the officer mistook for a felon. The court observed that the situation was "tense and menacing" because of earlier reports of robberies in the vicinity, that the victim matched the description of a suspect and appeared to be carrying a shotgun, and that the victim continued to flee after the officer had shouted "Stop, police." (Id. at pp. 965, 968–970, 108 Cal.Rptr. 630.) Again, the objective unreasonableness of defendant's course of conduct, compared with the officer's actions in *Somers*, is of an evidently greater magnitude.

In sum, we reject the proposition that the provision of prayer alone to a seriously ill child cannot constitute criminal negligence as a matter of law. Whether this defendant's particular conduct was sufficiently culpable to justify conviction of involuntary manslaughter and felony child endangerment remains a question in the exclusive province of the jury.

II. *Constitutional Defenses*

A. *Free exercise under the First Amendment*

In the absence of a statutory basis to bar defendant's prosecution, we necessarily reach her constitutional claims. Defendant and the Church first contend that her conduct is absolutely protected from criminal liability by the First Amendment to the United States Constitution and article I, section 4, of the California Constitution. We do not agree.

The First Amendment bars government from "prohibiting the free exercise" of religion. Although the clause absolutely protects religious belief, religiously motivated conduct "remains subject to regulation for the protection of society." (*Cantwell v. Connecticut* (1940) 310 U.S. 296, 303–304, 60 S.Ct. 900, 903, 84 L.Ed. 1213.) To determine whether governmental regulation of religious conduct is violative of the First Amendment, the gravity of the state's interest must be balanced against the severity of the religious imposition. (*Wisconsin v. Yoder* (1972) 406 U.S. 205, 221, 92 S.Ct. 1526, 1536, 32 L.Ed.2d 15.) If the regulation is justified in view of the balanced interests at stake, the free exercise clause requires that the policy additionally represent the least restrictive alternative available to adequately advance the state's objectives. (*Thomas v. Review Bd. of Indiana Employment Security Div.* (1981) 450 U.S. 707, 718, 101 S.Ct. 1425, 1432, 67 L.Ed.2d 624.)

Defendant does not dispute the gravity of the governmental interest involved in this case, as well she should not. Imposition of felony liability for endangering or killing an ill child by failing to provide medical care furthers an interest of unparalleled significance: the protection of the very lives of California's children, upon whose "healthy, well-rounded growth . . . into full maturity as citizens" our "democratic society rests, for its continuance. . . ." (*Prince v. Massachusetts* (1944) 321 U.S. 158, 168, 64 S.Ct. 438, 443, 88 L.Ed. 645.) Balanced against this interest is a religious infringement of significant dimensions. Defendant unquestionably relied on prayer treatment as an article of genuine faith, the restriction of which would seriously impinge on the practice of her religion. We note, however, that resort to medicine does not constitute "sin" for a Christian Scientist (Schneider, *Christian Science and the Law: Room for Compromise?*, supra, 1 Colum.J.L. & Soc. Probs. at pp. 87–88), does not subject a church member to stigmatization (Talbot, *The Position of the Christian Science Church*, supra, 26 N.E.Med.J. at p. 1642), does not result in divine retribution (Schneider, op. cit. supra, at pp. 87–88), and, according to the Church's amicus curiae brief, is not a matter of church compulsion.

Regardless of the severity of the religious imposition, the governmental interest is plainly adequate to justify its restrictive effect. As the United States Supreme Court stated in *Prince v. Massachusetts*, supra, 321 U.S. at page 170, 64 S.Ct. at page 444, "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children before they have reached the age of full legal discretion when they can make that choice for themselves." The court in *Prince* considered a free-exercise claim asserted by parents whose religious beliefs required that their children sell religious tracts in violation of child labor laws. If parents are not at liberty to "martyr" children by taking

their labor, it follows a fortiori that they are not at liberty to martyr children by taking their very lives. As the court explained, "The right to practice religion freely does not include liberty to expose the community or child to communicable disease or the latter to ill health or death." (Id. at p. 167, 64 S.Ct. at p. 442; accord, *Wisconsin v. Yoder*, supra, 406 U.S. at pp. 233–234, 92 S.Ct. at pp. 1542.)

In an attempt to avoid this inexorable conclusion, the Church argues at length over the purportedly pivotal distinction between the governmental compulsion of a religiously objectionable act and the governmental prohibition of a religiously motivated act. Accepting arguendo the force of the distinction, we find that it has no relevance in a case involving an interest of this magnitude. As the court in *Prince* recognized, parents have *no* right to free exercise of religion at the price of a child's life, regardless of the prohibitive or compulsive nature of the governmental infringement. Furthermore, the United States Supreme Court has specifically sustained the compulsion of religiously prohibited conduct for interest no more compelling than here implicated. In *Jacobson v, Massachusetts* (1905) 197 U.S. 11, 39, 25 S.Ct. 358, 367, 49 L.Ed. 643, the court upheld a law compelling the vaccination of children for communicable diseases in the face of parental religious objections. In *United States v. Lee* (1982) 455 U.S. 252, 261, 102 S.Ct. 1051, 1057, 71 L.Ed.2d 127, the court upheld a law requiring that the Amish violate the tenets of their faith by participating in the Social Security system. And in *Gillette v. United States* (1971) 401 U.S. 437, 462, 91 S.Ct. 828, 842, 28 L.Ed.2d 168, the court upheld the government's right to compel certain conscientious objectors to make war despite the religious character of their objections. We see no basis in these precedents for the conclusion that parents may constitutionally insulate themselves from state compulsion so long as their life-threatening religious conduct takes the form of an omission rather than an act.

The imposition of felony liability for failure to seek medical care for a seriously ill child is thus justified by a compelling state interest. To survive a First Amendment challenge, however, the policy must also represent the least restrictive alternative available to the state. Defendant and the Church argue that civil dependency proceedings advance the governmental interest in a far less intrusive manner. This is not evident. First, we have already observed the profoundly intrusive nature of such proceedings; it is not clear that parents would prefer to lose custody of their children pursuant to a disruptive and invasive judicial inquiry than to face privately the prospect of criminal liability. Second, child dependency proceedings advance the governmental interest only when the state learns of a child's illness in time to take protective measures, which quite likely will be the exception rather than the rule: "Under ordinary circumstancers, . . . the case of a true believer in faith healing will not even come to the attention of the authorities, unless and until someone dies." (Comment, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer*, supra, 8 Loyola L.A.L.Rev. at pp. 403–404). Finally, the imposition of criminal liability is reserved for the actual loss or endangerment of a child's life and thus is narrowly tailored to those instances when governmental intrusion is absolutely compelled.

We conclude that an adequately effective and less restrictive alternative is not available to further the state's compelling interest in assuring the provision of medical care to gravely ill children whose parents refuse such treatment on religious grounds. Accordingly, the First Amendment and its California equivalent do not bar defendant's criminal prosecution. (Accord, *Craig v. State* (1959) 220 Md. 590, 155 A.2d 684, 690; *People v. Pierson* (N.Y. 1903) 176 N.Y. 201, 68 N.E. 243, 245; *Owens v. State* (1911) 6 Okl.Cr. 110, 116 P. 345, 347–348; *Commonwealth v. Barnhart* (1985) 345 Pa.Super. 10,

497 A.2d 616, 623–624; Note, *California's Prayer Healing Dilemma*, supra, 14 Hastings Const.L.Q. at pp. 412.)

B. *Due process right to fair notice of illegal conduct*

Article I, section 7, of the California Constitution and the Fourteenth Amendment to the United States Constitution both assure that no person shall be deprived of "life, liberty, or property without due process of law." Among the implications of this constitutional command is that the state must give its citizenry fair notice of potentially criminal conduct. This requirement has two components: "due process requires a statute to be definite enough to provide (1) a standard of conduct for those whose activities are proscribed and (2) a standard for police enforcement and for ascertainment of guilt," (*Burg v. Municipal Court* (1983) 35 Cal.3d 257, 269, 198 Cal.Rptr. 145, 673 P.2d 732, cert. den. 466 U.S. 967, 104 S.Ct. 2337, 80 L.Ed.2d 812; see also *Kolender v. Lawson* (1983) 461 U.S. 352, 357–358, 103 S.Ct. 1855, 1858, 75 L.Ed.2d 903.) Defendant contends that sections 192(b) and 273a(1), when read together with section 270, violate this constitutional dictate.

We initially observe that these statutes do not invite standardless law enforcement. Unlike typical due process challenges involving an ambiguously worded statute applied in an arbitrary and unforeseeable manner (see, e.g., *Lanzetta v. New Jersey* (1939) 306 U.S. 451, 59 S.Ct. 618, 83 L.Ed. 888), we consider here three separate provisions that clearly identify their respective proscriptions. (*People v. Harris* (1966) 239 Cal.App.2d 393, 395–397, 48 Cal.Rptr. 677 [upholding the validity of § 273a on fair notice grounds]; *People v. Wilson* (1947) 78 Cal.App.2d 108, 114, 177 P.2d 567 (same, § 192(b)]; *People v. Yates* (1931) 114 Cal.App.Supp. 782, 789, 298 P. 961 (same, § 270].) Even if we accept arguendo defendant's conten-

tion that the intersection of the statutes creates uncertainty on the part of law enforcement officials regarding the legality of prayer treatment when a child's life is endangered or lost, the officials are neverthelsss required to make only one discretionary judgment: whether or not to prosecute conduct otherwise within the reach of the felony statutes in view of the provisions of section 270. This discretion certainly is not "of such a standardless sweep [that it] allows policemen, prosecutors, and juries to pursue their personal predilections." (*Smith v. Goguen* (1974) 415 U.S. 566, 575, 94 S.Ct. 1242, 1248, 39 L.Ed.2d 605.)

With respect to the remaining component of the due process analysis, defendant makes two arguments why the statute scheme fails to provide fair notice. She first contends that sections 192(b) and 273a(1) provide no notice of the point at which lawful prayer treatment becomes unlawful, thus requiring her "at peril of life, liberty or property to speculate as to the meaning of penal statutes." (*Lanzetta v. New Jersey*, supra, 306 U.S. at p. 453, 59 S.Ct. at p. 619.) She frames her argument in the form of a rhetorical question: "Is it lawful for a parent to rely solely on treatment by spiritual means through prayer for the care of his/her ill child during the first few days of sickness but not for the fourth or fifth day?" Justice Holmes correctly answers: "[T]he law is full of instances where a man's fate depends on his estimating rightly, that is, as the jury subsequently estimates it, some matter of degree. . . . 'An act causing death may be murder, manslaughter, or misadventure according to the degree of danger attending it' by common experience in the circumstances known to the actor." (*Nash v. United States* (1913) 229 U.S. 373, 377, 33 S.Ct. 780, 781, 57 L.Ed. 1232; see also *Coates v. City of Cincinnati* (1971) 402 U.S. 611, 614, 91 S.Ct. 1686, 1688, 29 L.Ed.2d 214.) The "matter of degree" that persons relying on prayer treatment must estimate rightly is the point at which their course

of conduct becomes criminally negligent. In terms of notice, due process requires no more. (*Burg v. Municipal Court*, supra, 35 Cal.3d at p. 270, 198 Cal.Rptr. 145, 673 P.2d 732.)

Defendant contends in conclusion that the statutory scheme violates her right to fair notice by allowing punishment under sections 192(b) and 273(1) for the same conduct that is assertedly accommodated under section 270. She argues in essence that the statutes issue "inexplicably contradictory commands" (*Raley v. Ohio* (1959) 360 U.S. 423, 438, 79 S.Ct. 1257, 1266, 3 L.Ed.2d 1344) and thus violate due process by precluding "an ordinary person [from] intelligently choos[ing], in advance, what course it is lawful for him to pursue." (*Connally v. General Construction Co.* (1926) 269 U.S. 385, 393, 46 S.Ct. 126, 128, 70 L.Ed. 322.)[18]

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[18] The Attorney General contends that we should analyze this question under the "reasonable reliance" doctrine rather than as a traditional fair notice issue. Unlike fair notice, which addresses the validity and enforceability of a statute, "reasonable reliance" is an exception to the rule that ignorance of the law is no excuse. (*Kratz v. Kratz* (E.D.Pa. 1979) 477 F.Supp. 463, 480.) It focuses on those circumstances in which an individual acts "in reasonable reliance upon an official statement of the law, afterward determined to be invalid or erroneous," and is then prosecuted for a violation of the law. (Model Pen.Code, § 204, subd. (3)(b).) Unlike a fair notice defense, the reasonable reliance doctrine requires proof of actual reliance on a mistaken construction of the statute. (Cf. *McBoyle v. United States* (1931) 283 U.S. 25, 27, 51 S.Ct. 340, 341, 75 L.Ed. 816.)

The issue before us is clearly of a different sort. Section 270 is not an erroneous statement or interpretation of sections 273a(1) and 192(b); it is a separate statute with full legal force and effect. The significance of this distinction is borne out by the cases analyzed under the reasonable reliance doctrine. (Compare *Raley v. Ohio*, supra, 360 U.S. 423, 79 S.Ct. 1257, 3 L.Ed.2d 1344, *Cox v. Louisiana* (1965) 379 U.S. 559, 85 S.Ct. 476, 13 L.Ed.2d 487 and *United States v. Lichenstein* (5th Cir. 1980) 610 F.2d 1272 [statements of public officials misrepresenting applicable law analyzed under reasonable reliance doctrine] with *United States v. Cardiff* (1952) 344 U.S. 174, 73 S.Ct. 189, 97 L.Ed. 200 and *Mid-Fla Coin Exchange, Inc. v. Griffin* (M.D.Fla. 1981) 529 F.Supp. 1006 [conflicting statutory provisions analyzed under fair notice doctrine].) There is a distinction of constitutional dimension between an official statement of the law and the law itself. The former, if erroneous and

In considering whether a legislative proscription is sufficiently clear to satisfy the requirements of fair notice, "we look first to the language of the statute, then to its legislative history, and finally to California decisions construing the statutory language." (*Pryor v. Municipal Court* (1979) 25 Cal.3d 238, 246, 158 Cal.Rptr. 330, 599 P.2d 636; *People v. Mirmirani* (1981) 30 Cal.3d 375, 383, 178 Cal.Rptr. 792, 636 P.2d 1130.) We thus require citizens to apprise themselves not only of statutory language but also of legislative history, subsequent judicial construction, and underlying legislative purposes (*People v. Grubb* (1965) 63 Cal.2d 614, 620, 47 Cal.Rptr. 772, 408 P.2d 100). (See generally Amsterdam, *The Void–For–Vagueness Doctrine in the Supreme Court* (1960) 109 U.Pa.L.Rev. 67.) These principles express the strong presumption that legislative enactments "must be upheld unless their unconstitutionality clearly, positively, and unmistakenly appears. A statute should be sufficiently certain so that a person may know what is prohibited thereby and what may be done without violating its provisions, but it cannot be held void for uncertainty if any reasonable and practical construction can be given to its language." (*Lockheed Aircraft Corp. v. Superior Court* (1946) 28 Cal.2d 481, 484, 171 P.2d 21, citations omitted.)

As we have discussed at length above, the purposes of the statutes here at issue are evidently distinguishable: sections 192(b) and 273a(1) protect against grievous and immediate physical harm while section 270 assures the routine provision of child support at parental expense. (Ante, at pp. 8–9 of 253 Cal.Rptr., pp. 859–860 of 763 P.2d.) In light of these distinguishable objectives, it cannot be said that the legality of defendant's conduct under section 270 constitutes an "inexplic-

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actually relied upon, may constitute an affirmative factual defense; the latter, if "inexplicably contradictory," violates fair notice and as a matter of law cannot form the basis for criminal liability.

ably contradictory command" with respect to the separate requirements of sections 192(b) and 273a(1). Indeed, the legislative history of section 270 specifically demonstrates the Legislature's unwillingness to extend the statute's religious exemption to the felony provisions. (Ante, at pp. 10–11 of 253 Cal.Rptr., at pp. 861–862 of 763 P.2d.) Sections 270, 192(b), and 273a(1) thus provided constitutionally sufficient notice to defendant that the provision of prayer alone to her daughter would be accommodated only insofar as the child was not threatened with serious physical harm or illness.[19]

III. *Disposition*

We conclude that the prosecution of defendant for involuntary manslaughter and felony child endangerment violates neither statutory law nor the California or federal Constitution. The judgment of the Court of Appeal is affirmed.

LUCAS, C.J., and PANELLI, ARGUELLES, EAGLESON and KAUFMAN, JJ., concur.

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[19] The American Civil Liberties Union argues in an amicus curiae brief that these allegedly conflicting statutes warrant particularly close scrutiny because they impinge on conduct protected by the First Amendment. Amicus cites authority supporting the proposition that vague laws which chill protected expression are a cause for serious concern. (See e.g., *Grayned v. City of Rockford* (1972) 408 U.S. 104, 109, 92 S.Ct. 2294, 2299, 33 L.Ed.2d 222; *Smith v. California* (1959) 361 U.S. 147, 150–151, 80 S.Ct. 215, 217, 4 L.Ed.2d 205.) The authority is inapposite. The only conduct that could possibly be "chilled" by the interrelation of these statutes is reliance on prayer alone in circumstances reached by sections 192(b) and 273a(1)—that is, when the conduct endangers or takes the life of a child. In such circumstances, free exercise is not implicated. (Ante, at pp. 18–20 of 253 Cal.Rptr., at pp. 869–871 of 763 P.2d.)

MOSK, Justice, concurring.

My opinion prepared for the court holds as a matter of statutory construction that Penal Code section 270 provides no religious defense to charges arising under the manslaughter and felony child-endangerment statutes. Because of this holding, the majority chose not to reach the Attorney General's separate contention that an extension of section 270's religious exemption to this felony prosecution would import into the proceeding a defense that offends the establishment clauses of the state and federal Constitutions. The issue, however, has been timely raised and thoroughly briefed, and its importance is manifest. I believe we should address it in this case for the guidance of the Legislature, so that any further legislative efforts to accommodate religious practice will comply with this constitutional command. As will appear, in my view the statutory exemption as it now reads plainly violates the establishment clauses.

The California and federal Constitutions admonish the Legislature "to make no law respecting an establishment of religion." (U.S. Const., 1st Amend.; Cal. Const., art. I, § 4.) Two broad classes of legislation fall under this proscription: laws "affording a uniform benefit to *all* religions" and laws "that discriminate *among* religions." (*Larson v. Valente* (1982) 456 U.S. 228, 252, 102 S.Ct. 1673, 1687, 72 L.Ed.2d 33, italics in original.) The constitutionality of the first class of enactments is traditionally measured against three criteria delineated by the United States Supreme Court in *Lemon v. Kurtzman* (1971) 403 U.S. 602, 91 S.Ct. 2105, 29 L.Ed.2d 745. Under *Lemon*, a law must first have a secular legislative purpose; second, its principal or primary effect must neither advance nor inhibit religion; and third, it must not foster an excessive governmental entanglement with religion. (Id. at pp. 612–613, 91 S.Ct. at pp. 2111.)

Laws in the second class strike closer to the heart of the establishment clause prohibition and thus require more de-

manding scrutiny. (*Larson v. Valente*, supra, 456 U.S. at p. 252, 102 S.Ct. at p. 1687.) As the *Larson* court observed, "The clearest command of the Establishment Clause is that one religious denomination cannot be officially preferred over another." (Id. at p. 244, 102 S.Ct. at p. 1683.) The essential attribute of this constitutional dictate is governmental neutrality with respect to matters of faith: "Government in our democracy, state and national, must be neutral in matters of religious theory, doctrine, and practice. It may not be hostile to any religion or to the advocacy of no-religion; and it may not aid, foster, or promote one religion or religious theory against another or even against the militant opposite. The First Amendment mandates governmental neutrality between religion and religion, and between religion and nonreligion." (*Epperson v. Arkansas* (1968), 393 U.S. 97, 103–104, 89 S.Ct. 266, 270, 21 L.Ed.2d 228.)[1] If a law effects a preference among religions, the government policy is presumptively suspect and subject to strict scrutiny. (*Larson v. Valente*, supra, 456 U.S. at p. 246, 102 S.Ct. at p. 1684.)

The court in *Larson* considered a provision exempting from the reporting and registration requirements of a charitable solicitations act only those religious organizations receiving over 50 percent of their contributions from members or affiliated organizations. (Id. at p. 231, 102 S.Ct. at p. 1676.) By plainly discriminating among religions in the allocation of the statutory exemption, the provision granted a denominational preference requiring strict scrutiny. (Id. at p. 246, 102 S.Ct. at p. 1684.)

[1] Under the California Constitution this value is explicit. Article I, section 4, assures that "free exercise and enjoyment of religion without discrimination or preference are guaranteed." In view of this provision, "Preference thus is forbidden even when there is no discrimination." (*Fox v. City of Los Angeles* (1978) 22 Cal.3d 792, 796, 150 Cal.Rptr. 867, 587 P.2d 663.) The establishment clause of the California Constitution must be read in conjunction with this unqualified constitutional prohibition against religious preference to appreciate the full scope of its independent protections.

While acknowledging that the state had "a significant interest in protecting its citizens from abusive practices in the solicitation of funds for charity, and that this interest retains importance when the solicitation is conducted by a religious organization" (id. at p. 248, 102 S.Ct. at p. 1685), the court nonetheless determined that the 50 percent rule was not sufficiently tailored to the statutory objective to withstand constitutional scrutiny. (Id. at p. 251, 102 S.Ct. at p. 1687.)

Section 270 similarly allocates its religious benefit on a selective basis. The statute excludes from criminal liability any parent who provides a minor with "treatment by spiritual means through prayer alone *in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof.*" (Italics added.) The provision thus affords no protection for parents who otherwise treat their children "by spiritual means through prayer alone." Specifically denied the exemption are (1) parents not affiliated with a "recognized" church or religious denomination who nonetheless provide prayer treatment on the basis of personal religious beliefs or the teachings of an unrecognized sect and (2) parents who provide prayer treatment in accordance with the tenets of a recognized denomination that does not "accredit" prayer "practitioners."

These excluded believers are not the fanciful product of a strained reading of the statutory language. In *People v. Arnold*, supra, 66 Cal.2d 438, 58 Cal.Rptr. 115, 426 P.2d 515, this court considered a religious exemption claimed under section 270 by a member of "the Church of the First Born," described as "a religious group believing in faith healing." (Id. at p. 442, fn. 1, 58 Cal.Rptr. 115, 426 P.2d 515.) Whether, and on what basis, a court would determine that the Church of the First Born constitutes a "recognized" religion is a serious ques-

tion not easily answered.[2] Furthermore, while the opinion in *Arnold* states that members of the group prayed with the defendant for a cure, there is no indication that they were "duly accredited practitioner[s]" of prayer treatment. (Ibid.) If not, Mrs. Arnold would have been denied the current statutory exemption even if the Church of the First Born had been "recognized." Indeed, certain well-known denominations decline to term anyone a "healer": "The so-called Pentecostal sects have some members who actively seek and encourage "divine intervention,' but they do not ordinarily perform acts that are thought to 'heal' a sick person. In this sense, there are no 'healers'; the cure is thought to come directly from God." (Comment, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer*, supra, 8 Loyola L.A.L.Rev. at pp. 413–414.)

Also denied the statutory exemption are parents whose use of prayer treatment stems from personal religious beliefs rather than the tenets of a recognized church or denomination. In other jurisdictions such parents have repeatedly prevailed on establishment and equal protection grounds against similarly formulated provisions. In *Davis v. State* (1982) 294 Md. 370, 451 A.2d 107, the court considered a challenge to a compulsory immunization statute exempting children whose parents objected because the procedure " 'conflicts with the tenets and practice of a recognized church or religious denomination of

[2] Consider for example the case of Arthur Charles Grady, who was described in another case as "a self-styled 'peyote preacher' and 'way shower.' " (*In re Grady* (1964) 61 Cal.2d 887, 888, 39 Cal.Rptr. 912, 394 P.2d 728.) Grady "acted as the spiritual leader of a group of individuals consisting of [five] codefendants and himself. This group lived together in [the home of a codefendant]. Although [Grady] did not share in the living expenses of the group, he selected their food, taught them deepbreathing exercises, how to pray, 'and in general how to love the Christian life.' " (Ibid.) Would this group warrant "recognized status" under the terms of the statutory exemption if its members were instructed by Grady to provide prayer in lieu of medical care to their ill children?

which he is an adherent or member. . . .' " (Id. 451 A.2d at pp. 108–109, italics deleted.) The plaintiff "rested his objection [to the immunization] on his personal religious views rather than the tenets of any recognized church or religious denomination of which he was a member or adherent." (Id. at p. 109.) In *Dalli v. Board of Education* (1971) 358 Mass. 753, 267 N.Ed.2d 219, the plaintiff fell outside a similar exception to a compulsory immunization statute because she objected on the basis of "her personal 'belief in the Bible, and its teachings.' " (Id. 267 N.E.2d at p. 220.) Finally, the court in *Brown v. Stone* (Miss.1979) 378 So.2d 218, certiorari denied 449 U.S. 887, 101 S.Ct. 242, 66 L.Ed.2d 112, considered the claim of a parent whose minister submitted the following statement: " 'Be it known that the [C]hurch of Christ as a religious body does not teach against the use of . . . immunizations or vaccinations. . . . However, [plaintiff] who is a member of the . . . Church of Christ . . . does have strong convictions against the use of any kind of medications and we respect his views.' " (Id. at pp. 219–220; see also *Maier v. Besser* (1972) 73 Misc.2d 241, 341 N.Y.S.2d 411, 412; cf. *Lewis v. Califano* (3d Cir.1980) 616 F.2d 73, 75.) Were these parents charged with failure to furnish medical attendance under section 270, they would face conviction regardless of their alternative provision of "treatment by spiritual means through prayer alone."

The one group of parents squarely protected by the terms of the statute are Christian Scientists, whose denomination sponsored the 1976 amendment to section 270 enacting its religious exemption. It is thus more than fortuity that the word "practitioner," used by Christian Scientists to formally designate their healers, also appears in section 270 to describe the required providers of the exempted treatment. As the analysis of the amendment prerpared for the Senate Committee on Judiciary frankly observed, the purpose of the legislation was to "Ensure that no parent *who uses Christian Science methods* to

heal his or her child shall be liable for not providing recognized medical attention for the children." (Sen.Com. on Judiciary, Analysis of Assem.Bill No. 3843, supra, italics added; accord, Sen.Democratic Caucus, 3d reading analysis of Assem.Bill No. 3843, supra.)

By sparing the favored from criminal liability while condemning others for failure to cloak identical conduct in the mantle of a sanctioned denomination or procedure, the religious exemption of section 270 operates without neutrality "in matters of religious theory, doctrine, and practice," and thus cannot survive in the absence of a compelling state interest in its discriminatory effecxt. Unlike the exemption in *Larson*, however, which advanced an independent secular objective, the only discernible state interest in this exemption is religious accommodation per se. While accommodation has been sustained as a legitimate objective when it "reflects nothing more than the governmental obligation of neutrality in the face of religious differences" (*Sherbert v. Verner* (1963) 374 U.S. 398, 409, 83 S.Ct. 1790, 1796, 10 L.Ed.2d 965), here the accommodation reflects nothing less than a denominational preference in the face of indistinguishable religious conduct. Manifestly this is not a compelling objective in the constitutional sense.

It the Legislature wishes to exempt from criminal liability those parents who rely on prayer treatment in lieu of medical care, the establishment clause requires at a minimum that the exemption be granted irrespective of denominational affiliation or practice. (*Gillette v. United States* (1971) 401 U.S. 437, 454, 91 S.Ct. 828, 838, 28 L.Ed.2d 168; *Lewis v. Califano*, supra, 616 F.2d at p. 78 ["The establishment clause requires the government to extend the same benefits it currently extends to Christian Scientists . . . to all individuals who sincerely believe in faith healing"]; *Developments in the Law: Religion and the State* (1987) 100 Harv.L.Rev. 1606, 1738 ["The only

legislative accommodations that can withstand establishment clause scrutiny are those that accommodate all religious objectors equally"].)[3] The conclusion is thus inescapable that the religious exemption found in section 270 violates the establishment clauses of the California and federal Constitutions. (Accord, *Dalli v. Board of Education*, supra, 267 N.E.2d at p.223; *Davis v. State*, supra. 451 A.2d at pp. 113–114; *State v. Miskimens* (Com.Pl.1984) 22 Ohio Misc.2d 43, 490 N.E.2d 931, 934; *Maier v. Besser*, supra, 341 N.Y.S.2d at p. 414; *Kolbeck v. Kramer* (1964) 84 N.J.Super 569, 202 A.2d 889, 892; Note, *California's Prayer Healing Dilemma*, supra, 14 Hastings Const.L.Q. at pp. 412–414; Comment, *Religious Beliefs and the Criminal Justice System: Some Problems of the Faith Healer*, supra, 8 Loyola L.A.L.Rev. at p. 429.)[4]

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[3] It is of course a separate question whether a blanket exemption under section 270 for *all* parents who sincerely provide children with prayer treatment would survive under the establishment clause. However, an exemption discriminating *among* parents who provide prayer treatment as a matter of sincere religious practice surely amounts to an unconstitutional establishment of religion.

[4] Defendant and the Church cite three cases in which exemptions reserved for adherents of a "recognized" church or denomination were upheld. (*Jaggard v. Comr. of Internal Revenue* (8th Cir.1978) 582 F.2d 1189; *Varga v. United States* (D.Md.1979) 467 F.Supp. 1113, affd. (4th Cir. 1980) 618 F.2d 106; *Kleid v. Board of Education* (W.D.Ky.1976) 406 F.Supp. 902.) Each is readily distinguishable. Both *Varga* and *Jaggard* involved challenges to a statute exempting from the federal self-employment tax those individuals who belong to a recognized religious sect which opposes acceptance of the benefits of any private or public insurance and which provides otherwise for its dependent members. (*Jaggard*, supra, 582 F.2d at p. 1190; *Varga*, supra, 467 F.Supp. at p. 1116.) Employing a compelling interest test, the court in *Varga* found that the governmental distinction was justified: "'The limitation by Congress of the exemption to members of religious sects with established tenets opposed to insurance and which made reasonable provisions for their dependent members was in keeping with the overall welfare purpose of the Social Security Act. This provision provided assurance that those qualifying for the exemption would be otherwise provided for in the event of their dependency.'" (Id. at p. 1118; accord, *Jaggard v. Comr. of Internal Revenue*, supra, 582 F.2d at p. 1190.)

The court in *Kleid* considered an exemption from a compulsory immunization statute reserved for "members of a nationally recognized and established church or religious denomination." (*Kleid v. Board of Education*, supra, 406 F.Supp.

The exemption in section 270 is also invalid under the criteria set forth in *Lemon v. Kurtzman*, supra, 403 U.S. at pages 612–613, 91 S.Ct. at pages 2111, even though "the *Lemon v. Kurtzman* 'tests' are intended to apply to laws affording a uniform benefit to *all* religions, and not to provisions . . . that discriminate *among* religions." (*Larson v. Valente*, supra, 456 U.S. at p. 252, 102 S.Ct. at p. 1687, italics in original, fn. omitted.) As noted above, *Lemon* requires that a statute (1) have a secular purpose, (2) neither advance nor inhibit religion, and (3) foster no excessive entanglement between government and religion.

I have already observed that the accommodative purpose of this statutory exemption reflects a nonsecular preference among adherents of prayer treatment rather than a neutral governmental response to genuine religious differences. While one might charitably argue that the exemption has the effect of identifying indicia of sincere religious conduct, thus facilitating administration of the statute, discrimination subject to the strictest scrutiny cannot be justified on the basis of administrative convenience alone. (Cf. *Frontiero v. Richardson* (1973) 411 U.S. 677, 690, 93 S.Ct. 1764, 1772, 36 L.Ed.2d 583.) Furthermore, the indicia are underinclusive and more likely to complicate rather than facilitate administration by requiring theological and social judgments that law enforcement officials and courts are not equipped to make. These administrative complications are closely linked to the troubling entanglements of church and state that the provision invites and *Lemon* forbids.

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at p. 903, fn. 3.) The plaintiff challenged the statute as violative of the establishment clause because it denied its exemption to those who objected to immunication on "'non-religious grounds.'" (Id. at p. 904.) The court thus did not consider discrimination *among* religions; the issue presented involved a religious exemption not otherwise provided for secular objectors. The opinion nowhere mentions the possibility under the statutory language of discrimination among the religious, and as such is inapposite.

To apply section 270, law enforcement officials and courts are required to evaluate "the tenets and practices" of various religions, searching for a doctrinal sanction of "spiritual treatment by prayer alone"; they are called upon to consider whether individual healers have been "duly accredited" by a particular denomination; and most disturbing, they are required to ascertain whether a particular religious group is "recognized." This last inquiry requires prosecutors and law enforcement officials to judge in their discretion whether a particular religious group has reached the critical mass of size and acceptance necessary for statutory protection, and leaves courts with nothing but subjective experience and belief to guide the required determination.

The assistant legal affairs secretary to the Governor clearly anticipated the foregoing troubling scenario in her pre-enactment analysis of the 1976 amendment to section 270: "The bill requires that the religion or denomination be 'recognized.' No further definition is provided. While this would constitute a severe problem in the medical emergency situation, it would not present a problem where there is sufficient opportunity to argue the problem of religion." It is precisely the entangling prospect of public officials arguing "the problem of religion" as an aspect of their ongoing enforcement of section 270, coupled with the politically divisive implications of their judgments, that the establishment clause seeks to avert. (*Larson v. Valente*, supra, 456 U.S. at pp. 252–255, 102 S.Ct. at pp. 1687–89.)

Defendant maintains that even if the statutory exemption violates the establishment clause, courts should nevertheless construe it in an edited fashion to avert the constitutional difficulties raised by its facially preferential language. This cannot be done. It is of course fundamental that "If feasible within the bounds set by their words and purposes, statutes should be construed to preserve their constitutionality." (*Conserva-*

torship of Hofferber (1980) 28 Cal.3d 161, 175, 167 Cal.Rptr. 854, 616 P.2d 836.) This is a limited interpretive function, however, and in no way delegates to courts the authority to rewrite the work of the Legislature. As Justice Tobriner observed with respect to the constitutionality of another provision of section 270, "If elimination of objectionable parts of a statute requires a wholesale rewriting, a court's attempt to do so transgresses both the legislative intent and the judicial function." (*In re King* (1970) 3 Cal.3d 226, 236, 90 Cal.Rptr. 15, 474 P.2d 983, cert. den. 403 U.S. 931, 91 S.Ct. 2249, 29 L.Ed.2d 709; see *Metromedia, Inc. v. City of San Diego* (1982) 32 Cal.3d 180, 187, 185 Cal.Rptr. 260, 649 P.2d 902.) Here, too, the unconstitutional aspect of the statute so clearly manifests a particular legislative intent that its elimination would amount to amendment by judicial fiat.

The Legislature has repeatedly designed statutory exemptions for parental use of prayer treatment with precisely the language found in section 270. Welfare and Institutions Code section 16509.1 excludes from its definition of neglect the provision of "treatment solely by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof. . . ." Section 11165.2 of the Penal Code and Welfare and Institutions Code section 18950.5 incorporate this definition by reference in their separate provisions defining the relationship of prayer treatment to child abuse and neglect. Finally, newly amended Welfare and Institutions Code section 300 adopts the language nearly verbatim in its provision defining the relationship of prayer treatment to child dependency proceedings. (See also Welf. & Inst.Code, § 5006.) Repeated use of the precise language evinces a legislative affinity for an invalid formulation that cannot be ignored.

Had the Legislature confronted the choice of extending its religious exemption to all parents who sincerely rely on prayer

treatment, no matter how unorthodox or unconventional their creed may appear, or alternatively to none at all, one cannot presume that it would have chosen the former rather than the latter option. The statutory provision thus must be considered as written. If the Legislature seeks to accommodate the practice of prayer treatment, it must more clearly evince its intent to do so in a nonpreferential manner to avert the fatal constitutional defects afflicting section 270.

KAUFMAN, J., concurs.

BROUSSARD, Justice, concurring and dissenting.

I agree with the majority that a prosecution may be maintained against petitioner for involuntary manslaughter. (Pen.Code, § 192, subd. (b).)[1] However, I cannot agree that the child endangerment provisions of section 273a are applicable to cases where the parent has omitted to provide necessary medical attendance. Rather the failure to provide necessary medical attendance is made punishable by section 270, and section 273a is not applicable to omissions to provide care but to active conduct endangering the child. Moreover, even if the failure to provide necessary medical attendance were punishable under section 273a, the prayer exemption of section 270 must be read into section 273a or the exemption is pointless. It is overwhelmingly clear that the Legislature sought to preclude child endangerment liability of persons coming within the religious exemption in section 270, particularly where prayer is successful, and to apply section 273a to such persons would defeat the legislative intent rendering the religious exemption meaningless.

[1] All further statutory references are to the Penal Code unless otherwise indicated.

Section 270 provides in part: "If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary . . . medical attendance . . . he or she is guilty of a misdemeanor . . ."[2] Section 273a provides that a person who "willfully

[2] Section 270 provides: "If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not exceeding one year, or by both such fine and imprisonment. If a court of competent jurisdiction has made a final adjudication in either a civil or a criminal action that a person is the parent of a minor child and the person has notice of such adjudication and he or she then willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, medical attendance or other remedial care for his or her child, this conduct is punishable by imprisonment in the county jail not exceeding one year or in a state prison for a determinate term of one year and one day, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment. This statute shall not be construed so as to relieve such parent from the criminal liability defined herein for such omission merely because the other parent of such child is legally entitled to the custody of such child nor because the other parent of such child or any other person or organization voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child or undertakes to do so.

"Proof of abandonment or desertion of a child by such parent, or the omission by such parent to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his or her child is prima facie evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is willful and without lawful excuse.

"The court, in determining the ability of the parent to support his or her child, shall consider all income, including social insurance benefits and gifts.

The provisions of this section are applicable whether the parents of such child are or were ever married or divorced, and regardless of any decree made in any divorce action relative to alimony or to the support of the child. A child conceived but not yet born is to be deemed an existing person insofar as this section is concerned.

"The husband of a woman who bears a child as a result of artificial insemination shall be considered the father of that child for the purpose of this section, if he consented in writing to the artificial insemination.

"If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute 'other remedial care', as used in this section."

causes or permits" child abuse or endangerment of the child's health or person is guilty of a felony or a misdemeanor. The section is divided into two subdivisions which use identical language to describe the conduct proscribed except that subdivision (1) of the section applies "under circumstancers or conditions likely to produce great bodily harm or death" and subdivision (2) of the section applies "under circumstances or conditions other than those likely to produce great bodily harm or death." Subdivision (1) provides that its violation is punished by imprisonment in the county jail not exceeding one year or in the state prison for two, four or six years. Violation of subdivision (2) is a misdemeanor.[3]

We must interpret the statutes "in accordance with applicable rules of statutory construction, fundamental among which are those which counsel that the aim of such construction should be the ascertainment of legislative intent so that the purpose of the law may be effectuated [citation]; that a statute should be construed with reference to the entire statutory system of which it forms a part in such a way that harmony may be achieved among the parts [citation]; and that courts should give effect to statutes 'according to the usual, ordinary import

[3] Section 273a provides:

"(1) Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment in the county jail not exceeding one year, or in the state prison for 2, 4, or 6 years.

"(2) Any person who, under circumstancers or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health may be endangered, is guilty of a misdemeanor."

of the language employed in framing them.' [Citation.]" (*Merrill v. Department of Motor Vehicles* (1969) 71 Cal.2d 907, 918, 80 Cal.Rptr. 89, 458 P.2d 33; *People v. Woodhead* (1987) 43 Cal.3d 1002, 1007–1008, 239 Cal.Rptr. 656, 741 P.2d 154; *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 40, 127 Cal.Rptr. 122, 544 P.2d 1322.)

When we follow the fundamental rules of statutory construction it is clear that sections 270 and 273a are both concerned with the protection of the health and person of children, that section 270 is applicable to a willful failure to provide necessary care and that section 273a is not applicable to a failure to provide medical care but to willful active conduct causing harm or endangering the child's health or person.

There can be no rational doubt that the Legislature intended that section 270 should be applicable where a parent fails to provide medical care endangering the health or person of a child. The language of the section speaks of the omission to "furnish necessary . . . medical attendance." Medical attendance is only necessary when the health or person of the child is endangered. The plain language of the first sentence of the section shows that the section applies to child endangering conduct. If the parent in the instant case had not come within the prayer exemption, it is clear that she could be prosecuted under section 270. (See *People v. Arnold* (1967) 66 Cal.2d 438, 451, 452, 58 Cal.Rptr. 115, 426 P.2d 515 [upholding misdemeanor manslaughter charge on the basis of section 270 prior to adoption of the religious exemption].)

Section 270 is not merely an economic regulation requiring reimbursement of those providing medical attendance. While the third sentence of the section provides that a parent is not relieved of criminal liability because another furnishes the medical care, that sentence may not be read as prohibiting criminal liability when no one provides the necerssary support. *People v. Sorenson* (1968) 68 Cal.2d 280, 287, 66 Cal.Rptr.

7, 437 P.2d 495, the principal case relied upon by the majority in concluding that the purpose of section 270 is reimbursement (maj. opn. p. 8 of 253 Cal.Rptr., p. 859 of 763 P.2d), expressly states that "the principal statutory objectives are to secure support of the child" and to protect the public fisc. If there was any doubt as to the legislative intent that the statute should be applied when the child does not receive necessary medical attendance as well as when the state seeks reimbursement, such doubt is dispelled by the adoption of the religious exemption in the last sentence of the section. As the majority recognize, the legislative history shows that the Legislature sought to "shield from liability those parents who provide prayer in lieu of medical care" (maj. opn. pp. 6–7 of 253 Cal.Rptr., pp. 857–858 of 763 P.2d), and it would be absurd to conclude that by adopting that provision the Legislature intended only to exempt a parent from a duty to pay for medical care which was not furnished.

Accordingly, section 270, like section 273a, is applicable to child endangerment, and both sections are applicable whether or not the child is injured (see *People v. Peabody* (1975) 46 Cal.App.3d 43, 46, 119 Cal.Rptr. 780; *People v. Harris* (1966) 239 Cal.App.2d 393, 398, 48 Cal.Rptr. 677). Both sections are found in the same chapter of the Penal Code. The statutes are in pari materia. (*People v. Caudillo* (1978) 21 Cal.3d 562, 585, 146 Cal.Rptr. 859, 580 P.2d 274; see 2A Sutherland, Statutory Construction (Sands, 4th ed. 1984) § 51.03, p. 467.) Accordingly, it is our duty to construe them together and harmonize them.

We cannot reject application of the pari materia rule on the grounds that section 270 deals not only with child endangerment but also with reimbursement or that section 273a deals not only with child endangerment but also with child abuse. If the pari materia rule were limited to identical statutes, it would serve no purpose at all and could never be applied. The

basis of the pari materia rule is that both statutes share the same purpose or object. (*Id.*) The pari materia rule applies although the statutes may have additional dissimilar objectives so long as they also share the same common objective.

When we harmonize the statues, the result is clear. Section 270 imposes a duty upon parents to provide the identified "necessary . . . medical attendance," and imposes criminal liability when the parent "willfully omits" to do so, thereby endangering the child. Section 273a imposes criminal liability for willfully causing or permitting child endangerment. To avoid conflict between the sections, section 273a should not be construed to apply when the asserted criminal conduct is the omission to perform the duties imposed by section 270, but only when the basis of the child endangerment is active conduct endangering the child, willfully causing or permitting child endangerment. The only active conduct shown by the evidence is that petitioner prayed. Prayer is not prohibited by section 273a.

Moreover, even if it is concluded that the failure to provide necessary medical attendance is punishable under section 273a in cases where the section 270 prayer exemption is inapplicable, we may not apply section 273a to cases where that exemption applies. The conclusion is unavoidable that the Legislature intended to exempt parents who utilize prayer treatment from the statutory requirement to provide "necessary . . . medical attendance." As pointed out above, medical attendance is necessary when its absence endangers the health or person. To hold that section 273a applies to parents who utilize prayer treatment in accordance with the exemption in section 270 means that those exempt may *always* be prosecuted under section 273a for child endangerment and that, since injury is unnecessary for child endangerment, it would be irrelevant whether God answered the prayers.

The legislative intent to provide some exemption from criminal liability is overwhelmingly clear, although the extent of the

exemption may not be clear. The exemption is obviously directed at the duty to protect the child by securing medical attendance imposed by section 270. It would be unrealistic and contrary to all of the legislative history we have been furnished to conclude that the exemption is directed at the economic aspect of section 270.[4] There is nothing in the legislative history to indicate that the Legislature sought to eliminate a nonexistent duty to pay for medical services which were never rendered or was concerned primarily with reimbursement for medical services paid for by others.

The religious exemption must be applied to the child endangerment provisions of section 273a or the legislative intent is totally defeated. It must be applied to cases where the failure to provide necessary medical attendance endangers the child's health but does not result in harm.

I would reverse the judgement of the Court of Appeal with directions to grant the petition for writ of prohibition insofar as it seeks dismissal of the section 273a charge and to deny it insofar as it seeks dismissal of the manslaughter charge.

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[4] I agree with the majority conclusion that no weight may be given to the Assembly staff report urging that section 273a should be amended to incorporate the religious exemption or to the Senate staff report raising questions as to a possible conflict between the exemption and the child harm provisions of section 273a. (See maj. opn., pp. 11–12 of 253 Cal.Rptr., pp. 862–863 of 763 P.2d.) We cannot tell whether the members of the Legislature decided the amendment was undesirable, was unnecessary or should be deferred so as to avoid interruption of the enactment process.

I would also point out that neither report focused on child endangerment; both were concerned with the necessity for amendment of section 273a with respect to the child abuse portion of the section and the manslaughter statute, cases where there is not merely endangerment but harm.

APPENDIX B

IN THE COURT OF APPEAL OF THE
STATE OF CALIFORNIA IN AND FOR THE
THIRD APPELLATE DISTRICT
(Sacramento)

LAURIE GROUARD WALKER, Petitioner v. THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent, THE PEOPLE OF THE STATE OF CALIFORNIA, Real Party in Interest,	3 Civil 24693 (Super.Ct. No. 70042) Filed: January 13, 1986

ORIGINAL PROCEEDINGS; application for a writ of prohibition. Writ denied.

Petitioner Laurie Walker (defendant) has been charged in respondent superior court with involuntary manslaughter (Pen. Code, § 192, subd. (b))[1] and child endangerment (§ 273a, subd. (1)). The charges stem from the death of her four-year-

[1] Penal Code section 192, subdivision (b), formerly Penal Code section 192, subdivision 2. (Stats. 1983, ch. 937, § 1, p. ; Stats. 1984, ch. 742, § 1, p. .)

Unless otherwise indicated, all further section references are to the Penal Code.

old daughter for whom she provided spiritual treatment in lieu of medical care.

The information alleges defendant acted without malice in the commission of a lawful act which might produce death in an unlawful manner and without due caution and circumspection.

Defendant filed a motion to dismiss the action (§ 995) on two grounds: (1) there was no reasonable or probable cause to believe she had committed a crime; and (2) she had no notice that her actions were criminal. The motion was denied, and this writ petition followed. At the behest of the Supreme Court, we issued an alternative writ of prohibition and have considered the merits of defendant's motion to dismiss, and find the facts and applicable legal authority compel the conclusion the motion was properly denied.

Defendant's daughter, Shauntay, fell ill on February 21, 1984, and died on March 9. During her short illness, Shauntay was treated by two accredited practitioners of Christian Science; defendant did not enlist the aid of any medical specialists or practitioners. An autopsy of Shauntay revealed she died of acute purulent meningitis which had been present in her body for at least two to three weeks at the time of her death.

The basis of defendant's motion to dismiss lies in her conception of the intent of section 270. She argues section 270 permits a parent to provide a child with spiritual treatment in lieu of medical care and establishes a complete defense to charges of child endangerment and involuntary manslaughter. Alternatively, she argues she was denied due process of law in that section 270 and other related provisions create a confused state of law with regard to criminal liability for injury to a child resulting from treatment by prayer.

Defendant sets forth three theories by which she contends section 270 absolves her of criminal liability. She asserts: (1) the legislative history of section 270 demonstrates the Legisla-

ture's intent to protect parents who apply faith healing from criminal liability; (2) she cannot be charged under the general provision of section 273a when the more specific provision of section 270 is applicable; and (3) section 270 has abolished the only known legal theory of manslaughter prosecution in cases in which a parent's failure to provide medical care was based on religious grounds. We find the contentions to be interrelated and totally lacking in legal support.

Section 270 states in pertinent part: "If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor . . . . [¶] If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute 'other remedial care', as used in *this* section." (Emphasis added.) The plain language of the statute precludes any inference that a parent who provides spiritual treatment would be insulated against charges of involuntary manslaughter or child endangerment should the lack of medical attendance result in the death of the child. The absence of language to that effect is not surprising when one considers the objectives of section 270 in context — i.e., "to secure support of the child and to protect the public from the burden of supporting a child who has a parent able to support him." (People v. Sorensen (1968) 68 Cal.2d 280, 287.) Section 270 simply contains nothing ambiguous to interpret. We have concluded that even a strained liberal construction of that section will not benefit defendant.

Defendant strenuously argues the legislative history of section 270 and the existence of other statutes pertaining to spiritual treatment indicate a legislative intention not to confine the "other remedial care" provisions of section 270 as a defense

to prosecutions for violations of section 270 only, but rather it was intended to extend as well to section 192, subdivision (b), and section 273a. The argument is unsupportable.

As enacted in 1872, section 270 provided: "Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon him by law, to furnish necessary food, clothing, shelter, or medical attention for such child, is guilty of a misdemeanor. (Pen. Code [of 1872], § 270.) In 1925, the Legislature amended section 270 (Assem. Bill. No. 1285 [AB]) by adding the phrase "or other remedial care." (Stats. 1925, ch. 325, § 1, p. 544.) In 1976, section 270 was again amended (AB 3843) to declare that treatment by prayer constitutes "other remedial care." (Stats. 1976, ch. 673, § 1, p. 1661.) However, the unambiguous language of that statute compels the conclusion that its scope is confined to the need to provide basic support necessities to children.

Defendants contends the goal of the 1925 legislation was to afford parents who provide their children with treatment by prayer as an alternative to medical care with a complete statutory defense to manslaughter charges based on a failure to provide needed medical care. That assertion was effectively disposed of by People v. Arnold (1967) 66 Cal.2d 438, in which the Supreme Court cast doubt on the validity of a treatment by prayer defense under section 270 in a manslaughter prosecution. In *Arnold*, the mother of a 13-year-old girl was convicted of misdemeanor-manslaughter for the death of her daughter due to her failure to seek medical attention for the child. While the conviction was reversed on other grounds, the Supreme Court ruled that the use of spiritual treatment as a means of other remedial care did not relieve a parent of the duty to supply needed medical attendance. It stated, "The phrase 'other remedial care,' . . . does not sanction unorthodox substitutes for 'medical attendance'; it indicates one of the multiple necessities which the parent must provide." (*Id.*, at p. 452.)

Defendant next argues the 1976 amendment (AB 3843) was in response to *Arnold*. We do not find that to be apparent. Rather, the necessity of the modification to section 270, which was sought by proponents of AB 3843, is not readily apparent; the 1976 amendment merely declared that spiritual healing constituted "other remedial care." The court in *Arnold*, however, had already determined such to be the case. (66 Cal.2d at pp. 451-452.) That amendment to section 270 did not address the contention that other remedial care could not act as a substitute to standard medical treatment.

Even assuming the Legislature had intended to permit the use of faith healing as a substitute for medical care for purposes of section 270, legislative analysis of that section demonstrates the addition of faith healing as "other remedial care" was not intended as a defense against charges of involuntary manslaughter or child endangerment. The possible impact of AB 3843 on sections 192, subdivision (b), and 273a was discussed in analyses of both the Assembly Committee on Criminal Justice and the Senate Committee on Judiciary. The Senate Committee Analysis asks somewhat rhetorically, "Might a parent be immune from liability for failure to provide for the health of the child because they choose treatment by prayer rather than common medical treatment, but incur liability if the child suffers any harm?" The answer seems to be found in the Assembly Committee Analysis which stated, "[f]irst, . . . though the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment, they would be liable if the child suffered any physiological harm. Second, no exception is made under the manslaughter statutes for parental liability should the child die."

That analysis at best demonstrates an awareness by the Legislature of the possible scope to which application of the faith healing language of section 270 might be extended. Had the

Legislature meant to provide spiritual treatment as a defense beyond section 270, language to that effect could have easily been included in the 1976 amendment. No amount of "legislation history" can fill a void in statutory language. (See People v. Knowles (1950) 35 Cal.2d 175, 182.) The fact that the Legislature failed to insert any such language in either section 270, 273a, or 192 reinforces the conclusion that it intended to limit the use of the faith healing exemption to section 270. (See 58 Cal.Jur.3d, Statutes, § 50, p. 387.)

In urging that the opposite conclusion should be drawn, defendant relies on a self-serving letter written by a representative of the Christian Science Committee to Assemblyman John T. Knox, the author of AB 3843, which expounded the Christian Science theory on why the language of section 270 should be sufficient to protect parents who provide the alternative of spiritual treatment from criminal liability. That letter obviously has no bearing on legislative intent and serves no useful purpose in our analysis. (See California Teachers Assn. v. San Diego Community College Dist. (1981) 28 Cal.3d 692, 699-701.)

Although we find the statutes involved (§ 270, 192, 273a) to be clear and unambiguous, the contentions tendered by defendant compel our examination of their provisions. We do so in light of the decisional mandate that "In construing a statute 'we begin with the fundamental rule that a court "should ascertain the intent of the Legislature so as to effectuate the purpose of the law."' [Citations.] 'An equally basic rule of statutory construction is, however, that courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them.' [Citations.] Although a court may properly rely on extrinsic aids, it should first turn to the words of the statute to determine the intent of the Legislature. [Citations.] 'If the words of the statute are clear, the court should not add to or alter them to accomplish a

purpose that does not appear on the face of the statute or from its legislative history.' [Citations.]" (California Teachers Assn. v. San Diego Community College Dist., supra, 28 Cal.3d at p. 698; Friends of Mammoth v. Board of Supervisors (1972) 8 Cal.3d 247, 284.)

The will of the Legislature must be determined by the language of the statute; intentions cannot be ascribed to the legislation that would be at odds with the articularted intention. (People v. Knowles, supra, 35 Cal.2d at p. 182.) Committee reports or statements submitted relative to the legislation may be considered an aid to the interpretation of the language only when they are a reiteration of legislative discussion and/or events leading to the adoption of the statute rather than merely an expression of personal opinion.

An indication of the Legislature's intent to limit the use of the faith healing exemption to section 270 may be drawn from the fact the subject exemption has not been extended to dependency proceedings. Welfare and Institutions Code section 300 provides that a minor may be adjudged a dependent child of the court if not provided with the ncessities of life — e.g., medical care. (See Welf. & Inst. Code, § 300.5.) AB 3843 originally proposed the addition of two Welfare and Institutions Code sections, 600.5 and 300.5.[2] (Sen. Amend. to Assem. Bill No. 3843 (1975-1976 Reg. Sess.) June 11, 1976.) If those sections had been adopted, they would have removed any discretion on the part of the juvenile court to declare a minor

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[2] Proposed section 600.5 read: "No minor who, in good faith, is under treatment solely by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, shall, for that reason alone, be considered a person described by Section 600."

Proposed section 300.5 read: "No minor who, in good faith, is under treatment solely by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, shall, for that reason alone, be considered a person described by Section 300."

a ward or dependent of the court for the sole reason that the parent failed to provide the child with necessary medical treatment and relied only on prayer or faith healing. Prior to the enactment of AB 3843, however, those proposed additions to the Welfare and Institutions Code were deleted. (Sen. Amend. to Assem. Bill No. 3843 (1975-1976 Reg. Sess.) August 4, 1976.) Accordingly, the failure to provide required medical care to a child, regardless of any ongoing spiritual treatment, is still a viable basis for dependency proceedings by which a juvenile court could order a child to receive proper medical attention. (Welf. & Inst. Code §§ 300, 300.5, 362.) It appears clear the Legislature did not intend to extend to parents complete discretion in providing their children with prayer treatment as a substitute to necessary medical care.[3]

Defendant also argues the Legislature's intent to insulate her conduct from criminal liability is demonstrated by statutes which recognize faith healing as a defense. We again disagree.

The provisions relied upon by defendant are Business and Professions Code sections 2063, 2731, and 2789, and Health and Safety Code section 1709. Each of these Business and Professions Code sections merely deal with licensing requirements related to the practice of nursing and medicine[4] while

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[3] In 1978, section 300.5 of the Welfare and Institutions Code was enacted to require the court to consider the application of prayer treatment in instances in which the minor is alleged to come within the provision of section 300 on the basis that he or she is in need of medical care. (Stats. 1978, ch. 539, § 2, p. 1701.) That requirement, however, does not preclude the court from declaring the child a dependent of the court and ordering medical treatment when the use of spiritual treatment alone is deemed a danger to the child.

[4] Business and Professions Code section 2063 states: "Nothing in this chapter [Medicine] shall be construed so as to discriminate against any particular school of medicine or surgery, school or college of podiatric medicine, or any other treatment, nor shall it regulate, prohibit, or apply to any kind of treatment by prayer, not interfere in any way with the practice of religion."

Business and Professions Code section 2731 states: "This chapter [Nursing] does not prohibit nursing or the care of the sick, with or without compensation or personal profit, when done by the adherents of and in connection with the

the Health and Safety Code provision excludes those who rely on prayer for healing from compliance with the provisions of the code dealing with cancer.[5] The Legislature's intent to provide a defense to spiritual treatment in such limited contexts, however, does not indicate an intent to provide that defense in child endangerment or manslaughter situations.

The exclusion from compliance with the licensing and cancer treatment regulatory provisions of those practicing prayer as a healing technique simply demonstrates the legislative belief that those practicing prayer as a healing aid do not necessarily fall in the category of charlatans or those who will prey upon the unfortunate for personal gain.

Defendant also contends that failure to construe section 270 as providing a defense to such charges would be inconsistent with the overall legislative policy respecting the right of parents to pursue alternative treatment by spiritual means. Each of the provisions cited in support of her contention (§ 11165; and Welf. & Inst. Code, §§ 16509.1, 18950.5) provides that a child receiving treatment by spiritual means in lieu of medical care shall not *for that reason alone* be considered a neglected

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practice of the religious tenents of any well recognized church or denomination, so long as they do not otherwise engage in the practice of nursing."

Business and Professions Code section 2789 states: "None of the provisions of this chapter [Nursing] shall be applicable to any school or schools conducted by any well recognized church or denomination for the purpose of training the adherents of such church or denomination in the care of the sick in accordance with its religious tenets."

[5] Health and Safety Code section 1709 states: "The failure of any individual, person, firm, association, or other entity representing himself, or itself, as engaged in the diagnosis, treatment, alleviation, or cure of cancer to comply with any of the regulations promulgated under this chapter [Cancer] is a misdemeanor. . . . [¶] The provisions of this chapter shall not apply to any person who depends exclusively upon prayer for healing in accordance with the teachings of a bona fide religious sect, denomination, or organization, nor practitioner thereof."

child.[6] The phrase "for that reason alone" suggests, however, the child may de deemed neglected or abused if the omission of medical care would result in serious harm. (Cf. People in Interest of D.L.E. (Colo. 1982) 645 P.2d 271, 274-275.) Consequently, the cited statutes do not aid defendant or demonstrate a legislative scheme to provide an absolute protection against prosecution for the use of faith healing in lieu of medical treatment.[7] The treatment by prayer provisions of section 270 does not provide a defense against the charged offenses.[8]

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[6] Section 11165, subdivision (c), states ". . . (1) 'Severe neglect' means . . . those situations of neglect where any person having the care or custody of a child willfully causes or permits the person or health of the child to be placed in a situation such that his or her person or health is endangered, as prescribed by subdivision (d), including the intentional failure to provide adequate food, clothing, shelter, or medical care. [¶] (2) 'General neglect' means the negligent failure of a person having the care or custody of a child to provide adequate food, clothing, shelter, medical care, or supervision where no physical injury to the child has occurred. [¶] For the purposes of this chapter [Control of Crimes and Criminals], a child receiving treatment by spiritual means as provided in Section 16509.1 of the Welfare and Institutions Code or not receiving specified medical treatment for religious reasons, shall not *for that reason alone* be considered a neglected child. . . . [Emphasis added.]"

Welfare and Institutions Code section 16509.1 states: "No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, *for that reason alone*, be considered to have been neglected within the purview of this chapter [State Child Welfare Services]. [Emphasis added.]"

Welfare and Institutions Code section 18950.5 states: "For the purposes of this chapter [Child Abuse Prevention], a child receiving treatment by spiritual means as provided in Section 16508 of the Welfare and Institutions Code shall not *for that reason alone* be considered an abused or neglected child. [Emphasis added.]"

[7] Defendant also relies on statutes which recognize spiritual treatment as a form of medical care for purposes of payment for such efforts by state funds and as proof of illness and disability. (Ed. Code, § 44978; Unemp. Ins. Code, § 2709; Welf. & Inst. Code, §§ 14059, 14132.) As these statutes do not relate to criminal liability, they are inapposite.

[8] Defendant's contention that the prosecution circumvented the Legislature's intent to insulate her conduct from criminal liability fails in light of our discussion.

Defendant also makes a related argument that the charge of child endangerment under section 273a must be dismissed because her conduct fell under the more specific provision of section 270. We reject the assertion.

"A settled rule of statutory construction precludes prosecution under a general statute when a more specific one describes the conduct involved. [Citations.] '[W]here the general statute standing alone would include the same matter as the special act, and thus conflict with it, the special act will be considered as an exception to the general statute whether it was passed before or after such general enactment.' (*In re Williamson* (1954) 43 Cal.2d 651, 654 [276 P.2d 593].)

"The statutes need not even contain identical elements: 'It is not correct to assume that the rule is inapplicable whenever the general statute contains an element not found within the four corners of the "special" law. Rather, the courts must consider the *context* in which the statutes are placed. If it appears from the entire context that a violation of the "special" statute will necessarily or commonly result in a violation of the "general" statute, the *Williamson* [*supra*] rule may apply even though the elements of the general statute are not mirrored on the face of the special statute.' (*People* v. *Jenkins* (1980) 28 Cal.3d 494, 502 [170 Cal.Rptr.1. 620 P.2d 587].)" (Finn v. Superior Court (1984) 156 Cal.App.3d 268, 271; emphasis in original.)

Section 273a punishes the acts generally classified as child abuse.[9] (People v. Ewing (1977) 72 Cal.App.3d 714, 717.) Subdivision (1) of that section, under which defendant was charged, states: "Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully

[9] Defendant herself has acknowledged "the [L]egislature never intended [section] 273a to operate as an alternative means of punishing conduct proscribed by [section] 270. Rather, the two sections [are] mutually exclusive, addressing totally different aspects of the problem of crimes against children."

causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable by imprisonment . . . ."

Accordingly, that provision proscribes a wide range of conduct including child beating, child endangerment, and child neglect. (People v. Benway (1985) 164 Cal.App.3d 505, 512.) The failure to provide medical attendance is but one method by which a child may be placed in danger under section 273a, subdivision (1). That provision is not violated unless the action or inaction of the charged party occurs under conditions likely to produce great bodily harm or death to the child. Since the failure to provide the necessities mandated by section 270 can frequently occur under conditions which do not involve child endangerment or neglect, a violation of section 270 will not necessarily or commonly result in a violation of section 273a, subdivision (1). Here, section 270 does not adequately describe the conduct involved; prosecution under section 273a, subdivision (1), does and is appropriate.[10]

Defendant next argues there is no basis upon which to find her guilty of involuntary manslaughter. We disagree.

Section 192, subdivision (b), defines involuntary manslaughter as the unlawful killing of a human being "in the commission of an unlawful act, not amounting to felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection." The Supreme Court in People v. Penny (1955) 44 Cal.2d 861, held the phrase "without due caution and circumspection" to be equivalent to "criminal negligence." (*Id.*, at p. 879.)

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[10] Subdivision (2) of section 273a also proscribes conduct which would cause or permit a child to be injured or placed in such situation that its person or health may be endangered. Again, minor or trivial ailments treated by prayer under section 270 do not fall within the scope of section 273a.

Defendant contends section 270 prevents the prosecution of her conduct under the misdemeanor-manslaughter rule because her actions fall under the faith healing provisions of that statute. However, whether or not her conduct constitutes a violation of section 270 is irrelevant since the prosecution did not charge defendant under that section and does not rely on it as a basis for the manslaughter charge.[11]

She also argues section 270 supplied the only basis upon which her conduct could be presented for involuntary manslaughter — i.e., misdemeanor-manslaughter. She asserts that prior to the enactment of legislation imposing a statutory duty on parents to provide medical care for their children, common law recognized that an honest belief in faith healing did not amount to culpable negligence in a manslaughter prosecution.

In California, however, it has been long recognized that the failure to exercise due care in the treatment of another, where duty to furnish such care exists, is sufficient to constitute that form of manslaughter which results from an act of omission. (People v. Chavez (1947) 77 Cal.App.2d 621, 628; 17 Cal.Jur.3d, Criminal Law, § 266, pp. 414-415.) In *Chavez, supra*, the court, in upholding a conviction of involuntary manslaughter, found the defendant's failure to properly care for her infant immediately after its birth constituted criminal negligence. (*Id.*, at p. 628; see People v. Penny, supra, 44 Cal.2d at pp. 869-874.) The duty of a parent to provide needed medical care for a child is not only inherent, but one established by statute. (§§ 270, 273a.) Accordingly, failure to provide needed medical care, regardless of the parent's religious beliefs, may constitute the lack of due caution basis by which the parent may be convicted of involuntary manslaughter.

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[11] Defendant is charged with involuntary manslaughter "in the commission of a lawful at which might produce death in an unlawful manner and without due caution and circumspection."

By the 1976 amendment to section 270, the Legislature did not change the holding of *Arnold, supra*, 66 Cal.2d at page 452, that "other remedial care" had to be provided in addition to clothing, food, shelter, and medical attendance. The 1976 amendment further defined "remedial care" to include "treatment by spiritual means through prayer alone" (Stats. 1976, ch. 673, § 1, p. 1661), but the further definition of "other remedial care" cannot reasonably be construed to change *Arnold's* rule establishing the *relationship* between medical attendance and "other remedial care." The 1976 amendment simply says that a parent's duty to furnish other remedial care is satisfied if he or she provides treatment by spiritual means through prayer. The 1976 amendment provides no exemption from any other legal duty.

Finally, defendant argues that even if section 270 does not insulate her actions from criminal liability under sections 192, subdivision (b), and 273a, subdivision (1), due process requires the dismissal of those charges. Her position is that there was no adequate notice her conduct was criminal in light of section 270 and other sections relating to faith healing. Our previous discussion of the clear meaning of the statute compels rejection of her contention.

As we have previously pointed out, sections 192 and 273a are unambiguous. The language of those sections clearly set forth conduct constituting involuntary manslaughter and child endangerment without any reference to spiritual treatment. Our analysis has also revealed there is no connection between those statutes and section 270, and that other statutes containing reference to faith healing are inappropriate and have no significance in this proceeding.

Defendant nevertheless asserts there is an apparent ambiguity between section 270 and sections 192 and 273a. She asserts that attorneys who had examined the interrelationship of the provisions believed that section 270 could possibly pro-

vide a complete defense for parents who apply spiritual treatment for their children. In support of her argument, she again refers to the self-serving correspondence from the Christian Science Committee on Publication, as well as the analyses of the Assembly and Senate on AB 3843.

We reiterate that any interpretation of section 270 emanating from the Christian Science Committee is obviously self-serving and of no legal significance. Secondly, contrary to defendant's contention, the comments contained in the Assembly Committee Analysis are indicative of a legislative understanding that section 270, as it presently stands, does not provide a complete defense to mans laughter in circumstances such as those in which faith healing by prayer was used rather than orthodox medical attendance. Consequently, the comments of the Senate and Assembly Committee Analyses, if used as an aid, are interpreted as indicating further amendments are required in order to provide such a defense.

Defendant also extends the argument that because section 270 fails to indicate at what point permitted spiritual treatment as an alternative to medical care transforms into criminal conduct, she was not afforded the due process right of notice as to when her conduct became unlawful. She relies on some legislative history surrounding title 21, section 852 of the Oklahoma statutes as support for her position.

Prior to 1983, the Oklahoma statute read: "Every parent of any child who willfully omits, without lawful excuse, to perform any duty imposed upon the parent by law to furnish necessary food, clothing, shelter or medical attendance for such child is guilty of a misdemeanor; . . . Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease

or remedial care of such child; provided, that the laws, rules, and regulations relating to communicable diseases and sanitary matters are not violated. However, nothing contained herein shall prevent a court from immediately assuming custody of a child and ordering whatever action may be necessary, including medical treatment, to protect his health or welfare." (Okla. Laws 1975, ch. 67, § 1.)

In State v. Lockhart (Okla.App. 1983) 664 P.2d 1059, an Oklahoma appellate court upheld the acquittal of a manslaughter charge based on a violation of section 852. Thereafter, section 852 of the Oklahoma statutes was amended as follows: "[A]s used in this section, the duty to furnish medical attention shall mean that the parent or legal custodian of a child must furnish medical treatment in such manner and on such occasions as an ordinarily prudent person, solicitous for the welfare of a child, would provide; *such parent or legal custodian is not criminally liable for failure to furnish medical attendance for every minor or trivial complaint with which the child may be afflicted*. . . . Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practice of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of such child; *provided, that medical care shall be provided where permanent physical damage could result to such child*; . . ." (Okla. Laws 1983, ch. 44, § 1; emphasis added.)

Defendant argues absent specific language as that contained in the amended version of section 852 of the Oklahoma statutes, it follows section 270 would be interpreted in the manner of *Lockhart*. Such interpretation, however, cannot benefit defendant. *Lockhart* simply held that a parent, who chose to rely on treatment by prayer for a child in lieu of medical care, could not be found guilty of the misdemeanor offense of failure to

provide for necessities. The acquittal of the first degree manslaughter charge was justified solely because the underlying misdemeanor could not be proved.[12] Here, defendant's manslaughter charge is not predicated on a violation of section 270.

Furthermore, unlike section 270, the Oklahoma provision contains language with reference to child endangerment and welfare proceedings. Such language indicates that the Oklahoma prayer treatment defense was not limited to a requirement to provide necessities. Accordingly, the 1983 amendment to the Oklahoma statute was necessary to prevent the interpretation that the use of faith healing was a complete defense to criminal liability resulting from the death of a child by illness.

The point at which parents may incur liability for substituting prayer treatment for medical care for their child is clear — when the lack of medical attention places the child in a situation endangering its person or health. (§§ 192, subd. (b); 273a.) The exact point at which that occurs, however, can only be determined by a jury. Defendant has not been denied the right to due process.

[12] Title 21, section 711 of the Oklahoma statutes states: "Homicide is manslaughter in the first degree in the following cases: [¶] 1. When perpetrated without a design to effect death by a person while engaged in the commission of a misdemeanor. [¶] 2. When perpetrated without a design to effect death, and in a heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon; unless it is committed under such circumstances as constitute excusable or justifiable homicide. [¶] 3. When perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed."

DISPOSITION

The peremptory writ of prohibition is denied. The alternative writ having served its purpose is discharged.

(CERTIFIED FOR PUBLICATION.)

EVANS,
_____,J.

I concur:

REGAN, Acting P.J.

I concur in the result reached by the majority and in most aspects of the majority opinion. However, in my view, Penal Coded section 270[1] contains no exemption from the parental duty to supply medical attention for a child. Our Supreme Court has ruled that the duty to supply "other remedial care," imposed by section 270, is in addition to, not a substitute for, the statute's duty to supply medical attention. Consequently, I do not agree with the majority's suggestion that section 270 may contain a "faith healing exemption." (Maj. opn at pp. 7-9.)

In People v. Arnold (1967) 66 Cal.2d 438, the court held that, "The phrase 'other remedial care,' [in section 270] . . . does not sanction unorthodox substitutes for 'medical attendance'; it indicates one of the multiple necessities which the parent must provide." (*Id.*, at p. 452.) This court is bound by the definitive interpretation given the statute by our Supreme Court. (See Auto Equity Sales, Inc. v. Superior Court (1962) 57 Cal.2d 450, 455.)

The majority correctly conclude that by its 1976 amendment to section 270, the Legislature did not change the holding of

[1] All further statutory references are to the Penal Code.

Arnold that "other remedial care" had to be provided *in addition to* clothing, food, shelter and medical attendance. The 1976 amendment further defined "remedial care" to include "treatment by spiritual means through prayer alone . . . ." (Stats. 1976, ch. 673, § 1, p. 1662.) However, the further definition of "other remedial care" cannot reasonably be construed to change *Arnold's* rule establishing the *relationship* between medical attendance and "other remedial care;" i.e., that remedial care must be provided in addition to medical attendance. No amount of "legislative history" can fill a void in statutory language. (See People v. Knowles (1950) 35 Cal.2d 175, 182.) The 1976 amendment simply says that a parent's duty to furnish "other remedial care" is satisfied if he or she provides treatment by spiritual means through prayer. The 1976 amendment provides no exemption from the duty to provide medical attendance set forth in section 270.

SIMS, J.

APPENDIX C

IN THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA IN AND FOR THE
COUNTY OF SACRAMENTO

PEOPLE OF THE STATE OF CALIFORNIA, Plaintiffs,	)	No. 70042 DEPT. 4
vs.	)	Filed: December 18, 1984
LAURIE GROUARD WALKER, Defendant.	)	

STATEMENT OF DECISION

FACTUAL BACKGROUND:

Defendant has been charged with violations of Penal Code section 273(a) (child endangerment), and Penal Code section 192(b) (involuntary manslaughter).[1] The charges stem from the death of defendant's daughter, Shauntay, for whom defendant provided spiritual treatment in lieu of medical care. Defendant is a Christian Scientist; during the course of her illness, Shauntay was visited several times by Norma Alpert and Carol Strop, both Christian Science practitioners. Also, defendant kept in touch with these practitioners frequently by phone. Shauntay fell ill on February 21, 1984, and died on March 9, 1984. The autopsy report lists meningitis as the cause of death.

[1] A charged violation of Penal Code section 187 was dismissed by the magistrate at the close of the preliminary hearing.

Much of the testimony was presented at the preliminary hearing in the form of stipulations joined by the defense and the District Attorney. The defendant filed a motion pursuant to Penal Code section 995 on the ground that her prosecution is barred by the religious exemption contained in the last paragraph of Penal Code section 270.

ANALYSIS:

Penal Code section 270 makes it a misdemeanor for a parent willfully without sufficient excuse to fail to provide his/her minor child with "necessary clothing, food, shelter or medical attendance, or other remedial care." The last paragraph of section 270 provides:

> "If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute 'other remedial care' *as used in this section*."

(Emphasis added.)

The defendant argues that the above-quoted definitional provision of Penal Code section 270 bars the prosecution for criminal negligence (Penal Code section 273a, 192) of a mother who fails to obtain medical treatment for her seriously ill daughter, and relies instead on a religious practitioner, resulting in the death of her daughter.

The controversy focuses on two major issues:

1. Did the legislature intend to provide a defense to criminal negligence by adding the religious exemption to Penal Code section 270?

2. Does Legislature's recognition of spiritual treatment in Penal Code section 270 and in other statutes eliminate any possible notice to defendant that her conduct was criminal?

Neither question has an easy answer. The defendant makes the following arguments:

1. *Argument*: On its face, Penal Code section 270 makes a parent's provision of treatment by a religious practitioner efficacious for the purposes of the criminal law, and therefore, not criminally negligent.

Analysis

Penal Code sections 270 and 273a address two different types of conduct. Penal Code section 270 is intended to ensure that a parent fulfills his duty to provide for his child. By its own terms, the religious exemption of Penal Code section 270 only applies to this type of conduct. A parent will not be found guilty of a misdemeanor failure to provide if he provides a child with spiritual treatment in lieu of medical or other remedial care. In contrast, Penal Code section 273a is intended to protect a child from endangerment to life likely to result in harm. In essence, the defendant argues that a child who is provided spiritual treatment can never legally be considered endangered. This interpretation would be inconsistent with Welfare and Institutions Code section 300.5 which allows a court to make a child a dependent who is not receiving medical treatment if necessary to ensure its health regardless of whether spiritual treatment is being provided.

2. *Argument*: By enacting the religious exemption of Penal Code section 270, the Legislature intented to provide parents with a defense to criminal negligence under Penal Code sections 273a and 192(b) based upon a failure to provide the child with medical care.

Analysis

A. Legislature History of Penal Code section 270

Much of the defendant's argument is based on her contention that Penal Code section 270 was twice amended in response to manslaughter prosecutions of parents who provided their children with spiritual treatment in lieu of medical care.[2] It is true that the materials defendant has submitted indicate that Christian Scientists requested the amendments, both in 1925 and 1976, in their quest for a defense. See Annual Report of the Christian Science Committee on Publication, October 1920, Exhibit A, No. 13 C-2; see also Exhibit A, No. 136-8: "Worthy of Note". However, the sponsor's motivation in introducing a bill is not determinative of the intent of the legislature as a whole in passing it. See, e.g., *California Teachers Association v. San Diego Community College District, et al.*, (1981) 28 Cal.3d 692, 699 (legislative intent not to be determined by polling individual members). Nearly all the material relating to the 1925 amendment consists of this type of material and is therefore not determinative.

A legislative committee report on the 1976 amendment (AE 3843) explains the request for the amendment as a request for clarification of a California policy which had been undermined by the California Supreme Court's decision in *People v. Arnold* (1967) 66 Cal.2d 438. See Report of Senate Committee on the Judiciary, Exhibit A, No. 12; see also Assembly Judiciary Report, No. 14. *Arnold* involved a prosecution for manslaughter of a mother who treated her sick daughter by spiritual means. Defendant points to this as an indication that the Legislature intended to provide a parent with a defense to manslaughter

[2] In 1925, the phrase "or other remedial care" was added; in 1976 the phrase was defined to include treatment by spiritual means.

by enacting the amendment. However, a careful examination of *Arnold* reveals that this is probably not the "clarification" that the Legislature sought. In *Arnold*, the manslaughter charges appear to have resulted from an application of the misdemeanor-manslaughter rule, based on the mother's violation of Penal Code sections 270 and 272. The mother had argued that these sections could not be applied to her because she had provided her daughter with "other remedial care" in accordance with Penal Code section 270. *Id.*, at 451-452. The Supreme Court rejected this argument, stating that "other remedial care . . . does not sanction unorthodox substitutes for 'medical attendance' . . . ."

It thus appears that the "clarification" refers to the question of whether spiritual treatment is a defense to misdemeanor charges under Penal Code section 270. It does not necessarily follow that the amendment was intended to provide a defense to prosecution for criminal negligence under Penal Code section 273a and 192(b). *See also*, letter of June 23, 1976, from Christian Scientists to Mr. Poche, the governor's assistant, which states: "The intent is . . . (to) protect parents from being charged with 'failure to provide' . . . ." Exhibit A, No. 17m.

The conclusion that providing a defense to criminal negligence was *not* the intent of the leglislature is supported by the fact that two separate legislative committee reports raised the possibility of a conflict between the section 270 religious exemption and sections 273a and 192(b). The reports point out that while a parent would satisfy the obligation to provide medical care if he/she used spiritual treatment, the parent could still be liable criminally if the child suffered harm. Senate Committee on Judiciary, Exhibit A, No. 12; Assembly Committee on Criminal Justice, Exhibit A, No. 10. The Assembly committee report hinted that a change in the manslaughter and endangerment statutes would be appropriate if the Legislature wanted to provide a religious defense to these offenses. The

Legislature failed to act, indicating that it did not intend to carry the religious exemption that far.[3]

In her reply brief, the defendant has read the same Assembly committee report to mean the opposite. The defendant argues that the Legislature concluded that the religious exemption covers all possible criminal liability. She has quoted the report as saying: ". . . If treatment by prayer is to be recognized in part, the parents *(w)ould* not be liable for the results of a permitted mode of healing." This quote is inaccurate. The report contains a typographical error: "hould" is how it reads; it probably should read "should". If the sentence is read in context, I believe the first interpretation is the better one.

The paragraph reads:

> "(3) The bill appears unclear in two respects. First, section 273a makes it a wobbler (10 year top) for any person to permit a minor under his care or custody to suffer any physical harm or injury. Thus, though the parents may not be liable for failing to provide for the health of the child because they choose treatment by prayer rather than common medical treatment, they would be liable if the child suffered any physiological harm. Second, no exception is made under the manslaughter statutes for parental liability should the child die. *If treatment by prayer*

[3] Exhibit A contains a letter written by a representative of the Christian Scientists to Assemblyman Knox, who introduced the bill. The letter states that amendments to Penal Code section 273a and Penal Code section 192(b) were "not necessary" to provide a religious defense to the offenses defined by these sections. This "conclusion" may be disregarded as self-serving. It may just as easily be seen as the result of a tactical decision to avoid the defeat of controversial amendments. Apparently, this letter is the source of the defendant's statement that "(t)he legislature determined that amendments providing comparable protection in Penal Code section 273a and 192 were unnecessary." Defendant's brief at p. 20.

> *is to be recognized in part, the parents hould (sic) not be liable for the results of using a permittted mode of healing.*" (Emphasis added.)

Other parts of the legislative history support the conclusion that the Legislature did not intend to extend the religious exemption to life-threatening situations. Along with the amendment to Penal Code section 270, AB 3843 included an addition to the Welfare and Institutions Code which concerned a court's power to declare a child a dependant due to a parent's refusal or failure to provide medical care. The proposed new section (proposed section 300.5 or 600.5) provided:

> "No child who in good faith is under treatment solely by spiritual means through prayer alone . . . shall, for that reason alone, be considered a person described by Section 600." (A dependent child of the Juvenile Court.)

Legislative Counsel interpreted this section to preclude judicial intervention based solely on a child's need for medical care, where the child is being treated by spiritual means. See Exhibit A, No. 17g.[4] This section was removed entirely from the final version of the bill which was signed into law in August 1976. It therefore appears that the Legislature intended to avoid the possibility that spiritual treatment could be used as a defense to a dependency petition based on a child's need for medical treatment when the child's life is endangered. This

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[4] It is interesting to note that the Christian Scientists sought to increase support for this section by allaying these fears. See letter to Director of Health Department (Dr. Lackner) from Christian Scientists, June 16, 1976, which states that section 600.5 would not prevent a court from taking custody if spiritual treatment is not effective. Exhibit A, No. 17K. *In accord*, letter from Christian Scientists to Mr. Poche (governor's assistant) of June 23, 1976, paragraph 6, Exhibit A, No. 17M.

conclusion is supported by the passage in 1978 of Welfare and Institutions Code 300.5, which explicitly allows judicial intervention to protect a child in need of medical care even where the parent is providing spiritual treatment.

Finally, the most persuasive evidence of the legislative intent is found on the face of the statute itself. By its own terms, the religious exemption is confined to the misdemeanor failure to provide defined by Penal Code section 270.

The question of the legislative intent here is close, and the defendant has made a good argument. The argument has some merit because most of the past prosecutions for manslaughter on similar facts appear to have been based on an application of the misdemeanor-manslaughter rule. The exemption provided a defense to the underlying misdemeanor and thus operated as a defense to manslaughter. In an Oklahoma case cited by the defendant, *State v. Lockhart* (Okla. 1983) 664 P.2d 1059, the court concluded that this was the result intended by the Oklahoma legislature. (The prosecution in *Lockhart* was based on the misdemeanor-manslaughter rule.) The Court notes, however, that the statute at issue in *Lockhart* explicitly states that a child is not to be considered *endangered* due to the provisaion of spiritual care in lieu of medical care. The case is thus distinguishable; the California provision, Penal Code section 270, does not refer to an "endangerment".[5]

For the reasons discussed above, it does not appear that the California Legislature intended the religious exemption to operate as a defense to a charge of criminal negligence.

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[5] The Oklahoma statute reads: "Nothing in this section shall be construed to mean a child is endangered for the sole reason the parent or guardian, in good faith, selects and depends upon spiritual means alone through prayer. . . ." The section was amended on November 1, 1983, to limit the religious defense to minor threats to the child's health: ". . . provided, that medical care shall be provided where permanent physical damage could result to such child." The defendant points to this amendment as an example of a statute that gives fair warning of possible criminal liability to a parent who provides spiritual treatment in lieu of medical care.

B. Other Code Sections Dealing with Spiritual Treatment

Defendant argues that the legislative intent to provide parents a religious defense to criminal negligence is demonstrated by other code sections that explicitly protect spiritual treatment. However, what appears from the code sections cited is the Legislature's attempt to avoid infringing on the First Amendment right of religious freedom, by avoiding, whenever possible, regulation in the area of spiritual healing. See, e.g., Business and Professions Code section 2052 et. seq., section 2063 (unlawful practice of medicine prohibited; chapter does not apply to religious practitioners); Health and Safety Code section 1700 et. seq., section 1709 (prohibits use of unauthorized drugs or methods for treatment of cancer; chapter does not apply to religious practitioners).

Also, the Welfare and Institutions Code chapter cited by the defendant, section 14000, deals with the provision of health services to medically indigent persons. The services of a religious practitioner are covered "insofar as these can be encompassed by federal participation under an approved plan." Welfare and Institutions Code section 14132 (a) (schedule of benefits). As anyone familiar with Medi-Cal and Medicaid will recognize, this proviso is most likely intended to ensure that the state program complies with federal law. The Medicaid program was established in 1965 by Title XIX of the Social Security Act of 1935, 42 USC section 1396 et seq. It is designed to enable participating states through federal grants-in-aid to provide indigents with medical assistance. *Coe v. Hooker* (1976) 406 F.Supp 1072. Once a state opts to participate in the Medicaid program, it is bound to conform to the federal law governing Medicaid. *Shea v. Vialpando* (1974) 416 U.S. 251.

In short, the sections providing protection to religious practitioners, and allowing Medi-cal reimbursements for their serv-

ices, do not require the conclusion that the Legislature intended a religious defense to a charge of criminal negligence.

C. Other Statutes Relating to the Welfare of Children

Defendant offers Welfare and Institutions Code sections 16509.1 and 18950.5 in support of her argument that the Legislature intended to provide a complete religious defense. Both sections state that no child who is provided spiritual treatment shall "for that reason alone" be considered neglected or abused within the meaning of the respective chapters.

The Colorado Supreme Court has construed similar language to allow judicial intervention despite religious objections where a minor suffers from a life-threatening medical condition. *People in the Interest of DLE* (Colo. 1982) 645 P.2d 271. The phrase "for that reason alone" was interpreted in *DLE* to restrict the religious defense to non-life threatening situations. "Endangerment" was considered an *additional* reason allowing the court to declare such a child neglected and dependent when medical care is necessary but not being provided due to the parent's religious beliefs. See also *In re Edward C.* (1981) 126 Cal.App.3d 193. (Appeal from adjudication of "dependent" based on physical abuse. Father had claimed his religious beliefs required corporal punishment. Court stated "mistreatment of a child is not priviliged because it is imposed in the guise of religious expression"). See also *In re Angela P.* (1981) 28 Cal.3d 908. (Parental right doctrine vs. child's well-being. "Parents should suffer the consequences of their own inadequacy, rather than the child." Upheld termination of parental rights of mother who had failed to protect child from abusive father).

The Legislature's recognition that religious treatment is not a complete defense where a child's life is endangered is shown

by the enactment of Welfare and Institutions Code section 300.5 in 1978, which allows a court to declare a child a dependent, if necessary, despite the provision of religious care. See also section 16509, quoted ante, which recognizes that certain religious practices may endanger a child.

The sections offered provide little support for the defendant's position.

3. *Argument*: Prosecution of defendant circumvents legislative intent to make her conduct noncriminal.

Analysis

Defendant cites a case in which a prosecution was attempted under a general code section when a section which more specifically defined the proscribed conduct required a condition precedent to prosecution that was not met. See *People v. Jenkins* (1978) 28 Cal.3d 494. (Perjury charged where defendant misstated fact on welfare application; attempt to obtain restitution required as condition precedent to welfare fraud prosecution also applies.) In *Jenkins*, the California Supreme Court concluded that the charges had to be dismissed. By analogy, defendant argues that the "protection" of religious freedom under Penal Code section 270 requires a dismissal of the charges brought against her under Penal Code section 273 and Penal Code section 192(b).

The defendant's argument rests rather precariously on language in *Jenkins* that describes the restitution requirement as a "protection" for those accused of welfare fraud. "(T)he state can circumvent this protection (requirement that restitution must be sought before charging welfare fraud) by the simple device of charging perjury rather than AFDC fraud, thereby frustrating legislative intent. . . ."

The defendant's argument can be disposed of by referring to the above discussion of the legislative intent behind Penal Code section 270. The Legislature did not intend to provide a religious defense to criminal negligence by amending Penal Code section 270.

4. *Argument*: (1) The misdemeanor-manslaughter rule, based on defendant's violation of Penal Code section 270, cannot be applied here. (2) Penal Code section 270 reinstates the common law rule that reliance on spiritual treatment does not constitute criminal negligence.

Analysis

Part 2 of this argument once again requires an analysis of the legislative intent behind Penal Code section 270. The defendant cites 19th century cases allowing a religious defense to criminal negligence resulting in death, and argues that the 1925 amendment was intended to reinstate the common law rule. The intent discussion need not be repeated; the argument is hereby rejected. As discussed above, the exemption applies to the statutory duty to provide medical care, not to criminal negligence. Part 1 of the argument is unnecessary because the manslaughter charge against defendant is not based on the misdemeanor-manslaughter rule. She has been charged on a theory of criminal negligence. See *People v. Arnold, supra*, for an example of the application of the misdemeanor-manslaughter rule to a similar factual situation.

5. *Argument*: Defendant cannot be prosecuted under Penal Code sections 273a and 192(b) because a more specific statute covers the subject matter of the prosecution and exempts it. (The Court notes that this argument is actually a subtle variation on the "circumvention" theme discussed above in No. 3.)

Analysis

Much of the defendant's discussion again refers to the legislative history of Penal Code section 270, viewed from a slightly different angle. See above discussion of legislative intent.

Although the defendant cited *People v. Jenkins*, *supra*, 28 Cal.3d 494, earlier, she has not mentioned this case in connection with the specific-over-general rule. In *Jenkins*, a recent case, the California Supreme Court explained the specific-over-general rule as a tool "designed to ascertain and carry out legislative intent. The fact that the Legislature has enacted a specific statute covering much the same ground as a more general law is a powerful indication that the Legislature intended the specific provision alone to apply." *Id.*, at 505. The *Jenkins* Court examined the intent behind the provisions dealing with the offense of perjury and welfare fraud (by falsifying the application, which is signed under penalty of perjury). Although, as the Court recognized, a strict application of the rule would bar prosecution for perjury on the facts presented, the Court concluded that the legislature intended both sections to apply. To reach this conclusion, the Court relied on the statutory context of the welfare fraud provision. *Id.*, at 506-508. The defendant's argument must once again be rejected as discussed above, on the ground that the Legislature did not intend the religious exemption of Penal Code section 270 as a defense to criminal negligence.

Jenkins provides yet another ground for rejecting the defendant's argument. The California Supreme Court described the application of the specific-over-general rule as follows: "(T)he courts must consider the *context* in which the statutes are placed. If it appears from the entire context that a violation of the 'special' statute will necessarily or commonly result in a violation of the 'general' statute, the *Williamson* rule may apply. . ." *Id.*, at 502. Here, a violation of Penal Code section

273a based on failure to provide medical care necessarily results in a violation of Penal Code section 270. The converse, however, is not true: Not every violation of Penal Code section 270 based on failure to provide medical care results in the endangerment proscribed by Penal Code section 273a. See also *People v. Pointer* (1984) 151 Cal.App.3d 1128 (conviction for felony child endangerment upheld; mother's macrobiotic diet resulted in malnourishment of children).

Therefore, Penal Code section 273a is the more specific statute. Ms. Walker has been properly charged.

6. *Argument*: Defendant's due process rights have been violated because none of the statutes defining the charged violations give her fair warning.

Analysis

This argument actually contains two components: (1) No notice of proscribed conduct in general was provided because other code sections expressly condone it; and (2) no notice was provided as to when defendant's use of spiritual treatment became criminal. The second component is resolved by reference to the general principle that the question of when a deviation from the "reasonable person" standard becomes criminally negligent is a question of fact for the jury. If the rule were otherwise, the state could never prosecute on a theory of criminal negligence.

In arguing the first component, defendant relies in part on the general code provisions discussed above at Argument 2(B) which exempt religious practitioners from state licensing requirements. (Welfare and Institutions Code section 14059, Business and Professions Code sections 2052 and 2063; Health and Safety Code section 1709, Business and Professions Code

sections 2731, 2800, 2789.) Defendant adds here Education Code section 44978, and Unemployment Insurance Code section 2709, both of which prohibit discrimination against a worker who uses spiritual treatment for a disability that interferes with work.

The question of notice here is close, especially in light of the requirement that "more clarity is required in laws which may interfere with the exercise of constitutionally protected rights." *Bale v. San Jose Police Department* (1984) 158 Cal.App.3d 168, 172, citing *Hoffman Estates v. Flipside, Hoffman Estates* (1982) 455 U.S., 489, 498-499. As discussed above, the general provisions cited by defendant merely reflect the state's attempts to avoid infringing upon the religious freedom of its citizens who rely on religious practitioners. An uninformed parent *could* mistake this state policy of noninterference with religious beliefs for blanket approval of spiritual treatment. However, a more logical place to look in resolving the question of notice to a parent who provides treatment by prayer for a sick child is in the statutes dealing with the welfare of children. See above, Argument 2(c) for a discussion of these sections.

As pointed out in the discussion of Argument 2, the child welfare sections make it clear that the provision of prayer treatment is not given blanket approval when the health or life of the child is endangered. A child who needs medical treatment, but is provided spiritual treatment instead, may be declared a dependent of the juvenile court under Welfare and Institutions Code section 300.5. Also, such a child may be deemed neglected or abused under Welfare and Institutions Code sections 16509.1 and 18951. See discussion in Argument 2, and *People in the Interest of DLE*, *supra*, construing similar language of a Colorado statute. Notice can also be implied from the fact that Penal Code section 270 explicitly limits the

religious exemption to that section. Finally, Welfare and Institutions Code section 16509 states:

> "Cultural and religious child-rearing practices and beliefs which differ from community standards shall not in themselves create a need for child welfare services *unless the practices present a specific danger to the physical or emotional safety of the child.*"

From here it is not difficult to reach the conclusion that a parent who provides spiritual treatment when medical treatment is necessary may be liable for criminal negligence.[6] A prosecution may proceed under a "new" construction of a statute that is "reasonably foreseeable" to potential defendants. See *Keeler v. Superior Court* (1970) 2 Cal.3d 619 (enlargement of definition of murder to include the killing of an unborn fetus not reasonably foreseeable), and *People v. Sobiek* (1973) 30 Cal.App.3d 458 (prosecution for grand theft from fellow partners proper despite requirement that property taken must be "of another", and despite traditional statement that a partnership is not an entity distinct from its members).

It is also noted that allowing criminal liability under these circumstances squares with the policy of protecting the child's health under Welfare and Institutions Code section 300.5.

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[6] In her reply brief, defendant argues that this "conclusion" cannot be reached because dependency proceedings are civil whereas an endangerment prosecution is criminal. This distinction is not relevant to the question of notice. Defendant also suggests that under this reasoning collateral estoppel would require the conviction of a parent against whom a dependency petition has been sustained. This is absurd. The case cited in support is distinguishable, for it involved the *denial* of a petition. See *Lockwood v. Superior Court* (1984) 160 Cal.App.3d 667. (Criminal prosecution for child endangerment collaterally estopped by denial of dependency petition on same grounds.)

Otherwise, a parent who firmly believes in faith healing would have an incentive to hide a sick child from authorities to prevent their intervention.

In sum, defendant had notice that the state did not condone treatment by prayer when a child's life is in danger. See also *In re Robert P.* (1976) 61 Cal.App.3d 310, appeal dismissed 431 U.S. 911 (1976). (Any potential vagueness of (former) Welfare and Institutions Code section 600 cured by case holding that Civil Code section 4600 applies.)

RULING:

The motion pursuant to Penal Code section 995 is denied. The Court finds that the Legislature did not intend to provide a religious defense to criminal negligence by amending Penal Code section 270 in 1976, and that defendant had fair notice of the possibility of criminal liability.

JAMES L. LONG

Judge of the Superior Court

APPENDIX D

No. S.F. 24996

IN THE SUPREME COURT OF THE STATE

OF CALIFORNIA

I N B A N K

FILED: December 1, 1988

WALKER, Petitioner

v.

SUPERIOR COURT FOR THE CITY AND COUNTY OF SAN FRANCISCO, [*sic*] Respondent; PEOPLE, Real Party in Interest

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The time for granting or denying a rehearing in the above cause is hereby extended to and including January 09, 1989 or the date upon which a rehearing is either granted or denied, whichever occurs first.

/s/ Liacos

Chief Justice

APPENDIX E

ORDER DUE
January 9, 1989

ORDER DENYING REHEARING

No. S.F. 24996

IN THE SUPREME COURT OF THE STATE

OF CALIFORNIA

I N B A N K

FILED: January 5, 1989

LAURIE GROUARD WALKER, Petitioner

v.

THE SUPERIOR COURT OF THE COUNTY OF SACRAMENTO, Respondent;
PEOPLE, Real Party in Interest

Petitioner's petition for rehearing DENIED.

/s/ Liacos

Chief Justice

APPENDIX F

IN THE

SUPREME COURT OF THE STATE OF CALIFORNIA

REMITTITUR

To the Court of Appeal, Third Appellate District:

LAURIE GROUARD WALKER, Petitioner,	)	
vs.	)	Supreme Court No. S.F. 24996
THE SUPERIOR COURT OF SACRAMENTO COUNTY, Respondent;	)	Court of Appeal No. 3 Civ. 24693
THE PEOPLE, Real Party In Interest	)	County Sacramento Superior Court No. 70042

I, ROBERT WANDRUFF Clerk of the Supreme Court of the State of California, do hereby certify that the attached are copies of the original judgment now final, entered in the above-entitled cause on the 10th day of November, 1988.

Costs, if any, shall be taxed by the Court of Appeal.

WITNESS by hand and the seal of the Court, this 5th day of January, 1989.

ROBERT WANDRUFF
Clerk

By Henrietta A. Cruz
Deputy

Supreme Court, U.S.
FILED
MAY 26 1989
JOSEPH F. SPANIOL, JR.
CLERK

(2)

No. 88-1471

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1989

LAURIE WALKER,
Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN K. VAN DE KAMP
Attorney General
of the State of California
RICHARD B. IGLEHART
Chief Assistant Attorney General
JOHN H. SUGIYAMA
Senior Assistant Attorney General
HERBERT F. WILKINSON
Supervising Deputy Attorney General
CLIFFORD K. THOMPSON, JR.
Deputy Attorney General

350 McAllister Street, Room 6000
San Francisco, CA 94102
Telephone: (415) 557-0204

Attorneys for Respondent

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QUESTIONS PRESENTED

1. Whether petitioner's trial would violate the First Amendment ban on judicial inquiry into the verity of religion when the State would seek to bar, not offer, evidence of petitioner's religious beliefs.

2. Whether petitioner's claim of constitutionally inadequate notice of potential criminal liability is ripe when she has yet to be tried or convicted, and is one of only five similarly situated persons, none of whom has been tried or convicted, all of whom would have federal habeas corpus available if convicted.

3. Whether petitioner was denied fair warning that she could be held criminally liable for her conduct.

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No. 88-1471

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1989

LAURIE WALKER,
Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent.

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

OPINIONS BELOW

The November 10, 1988 opinion of the California Supreme Court, reported at 253 Cal.Rptr. 1, is Appendix A to the Petition for Writ of Certiorari. The January 10, 1986 opinion of the California Court of Appeal for the Third Appellate District, reported at 222 Cal.Rptr. 87, is Appendix B to the Petition for Writ of Certiorari. The December 18, 1984 unpublished order of the California Superior Court for the County of Sacramento is Appendix C to the Petition for Writ of Certiorari.

JURISDICTION

The jurisdiction of the Court is invoked under Title 28, United States Code, section 1257(a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The First and Fourteenth Amendments to the United States Constitution.

California Penal Code section 270, as relevant, provides:

> If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor. . . .
>
> If a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof, such treatment shall constitute "other remedial care," as used in this section.

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California Penal Code section 273a(1) provides:

> Any person who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any child to suffer, or inflicts thereon unjustifiable physical pain or mental suffering, or having the care or custody of any child, willfully causes or permits the person or health of such child to be injured, or willfully causes or permits such child to be placed in such situation that its person or health is endangered, is punishable in the county jail not exceeding one year, or in the state prison for 2, 4, or 6 years.

California Penal Code section 192(b) defines involuntary manslaughter as: [T]he unlawful killing of a human being without malice . . . in the commission of an unlawful act, not amounting to a felony; or in the commission of a lawful act which might produce death, in an unlawful manner, or without due caution and circumspection.

STATEMENT OF THE CASE

A. Statement of Facts

On February 21, 1984, petitioner's four-year-old daughter, Shauntay, developed the symptoms of fever and vomiting. (PT 27, 29, 49.)[1/] Petitioner told the Happy Time Pre-School director that Shauntay appeared to have the flu. (PT 45.) By the fourth day of Shauntay's seventeen-day illness, petitioner noticed that the child suffered from a stiff neck. (PT 27-28.) A day or so later, neighbor Helen Tuggle told her husband, "I never saw a little girl look so sick." (PT 90, 92.) Petitioner refused to allow her mother to see Shauntay and told relatives that Shauntay remained home because she did not wish to return to pre-school. (PT 45, 47.) During Shauntay's last week, petitioner observed that the four-year-old was disoriented; petitioner told a coroner that her daughter displayed increasingly severe symptoms and discomfort during the four days preceding her death. (PT 27-28, 69-70.)

The day before Shauntay died, petitioner's sister, Claudia Oswald, went to the Walker home. (PT 47.) Finding the little girl unresponsive, underweight, and apparently comatose, Oswald told petitioner that Shauntay was critically ill. (PT 46.) When petitioner refused to consult a physician, Oswald said she was going to notify

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1. "PT" refers to the reporter's transcript of petitioner's preliminary examination.

the authorities. (PT 46.) Later that day petitioner removed Shauntay to the home of Cherie Johnson. (PT 41-43, 98.) Shauntay died there the next day. (PT 44.) Petitioner telephoned Claudia Oswald to report Shauntay's death. After petitioner insisted that she would not consult a doctor if another of her children became ill, Oswald called the police. (PT 47-49.)

Shauntay died at 1:00 a.m. on March 9, 1984, due to acute purulent meningitis, a contagious disease caused by bacteria susceptible to antibiotics. (PT 20, 108.) The examining pathologist opined that meningitis was present at least two to three weeks before Shauntay's death. (PT 21.) A professor of pediatric medicine experienced in almost 1,000 bacterial meningitis cases testified that the child probably would have lived had petitioner consulted a physician when her daughter developed a stiff neck. (PT 105-119, 123, 128.) Depending on circumstances, 88 to 98 percent of medically treated bacterial meningitis patients survive. (PT 118.)

Petitioner provided no medical treatment throughout Shauntay's seventeen-day illness. (PT 27-28.) On several occasions, Shauntay was attended by a Christian Science nurse or a Christian Science practitioner, who prayed for the child. (PT 29-31, 36, 38-41.) The sincerity of petitioner's belief in prayer treatment, a central tenet of her Christian Science religion, is not questioned. A Christian Scientist who does provide medical treatment for a child does not commit a sin or expose himself or the child to divine retribution or ostracism by the Church, however. (Talbot, *The Position*

of the Christian Science Church, 26 N.E.Med.J. 1641, 1642 (1983); Schneider, *Christian Science and the Law: Room for Compromise?*, 1 Col.J.E. & Soc. Prob. 81, 87-88 (1965).)

B. State Court Proceedings

Following a preliminary examination on October 11, 1984, the Sacramento County District Attorney accused petitioner of child endangerment and involuntary manslaughter (Calif. Pen. Code, §§ 192(b) and 273a(1); See Petr.'s App. C.) Essentially, the information alleged that petitioner's criminal negligence proximately caused her child's death.

On December 18, 1984, the trial court denied petitioner's motion to set aside the information for reasons elaborated in a nineteen-page written decision. (Pet., App. C.)

Petitioner renewed her objections in the California Court of Appeal for the Third Appellate District, which entertained her petition for a writ of prohibition at the subsequent direction of the California Supreme Court. By its opinion published on January 10, 1986, the Court of Appeal refused to bar petitioner's state trial. (Pet., App. B.)

The California Supreme Court granted petitioner's application for review on March 27, 1986. On November 10, 1988 the California Supreme Court affirmed the judgment of the Court of Appeal, concluding that "the prosecution of defendant for involuntary manslaughter and

felony child endangerment violates neither statutory law nor the California or federal Constitution." (253 Cal.Rptr. at 22; Pet., App. A 39.)

On March 17, 1989, the Sacramento County Superior Court continued further proceedings until July 17, 1989, pending disposition of defendant's petition for a writ of certiorari, filed in this Court on March 6, 1989.

ARGUMENT

I

WHERE THE STATE WOULD SEEK TO BAR, NOT OFFER, EVIDENCE OF PETITIONER'S BELIEFS, HER TRIAL WOULD NOT VIOLATE THE FIRST AMENDMENT BAN ON JUDICIAL INQUIRY INTO THE VERITY OF RELIGIOUS CONVICTIONS.

Although petitioner abandons the claim, rejected below, that her conduct is absolutely protected from criminal liability by the First Amendment (Pet. p. 8; 253 Cal.Rptr. at 18), she urges that in prosecuting her for criminal negligence the State violates the Free Exercise Clause by making guilt or innocence depend "upon a jury's assessment of the 'reasonableness' of her decision . . . that prayer would suffice" to cure her child's illness. (Pet., p. 20.) "Not even acquittal after trial," petitioner insists, would protect her or others similarly situated "from having undergone the kind of inquisition

into matters of faith that the First Amendment squarely forbids." (Pet., p. 22; see *United States* v. *Ballard* 322 U.S. 78 (1944).)

Since petitioner's religion is not an element of the offenses denounced by California Penal Code sections 192(b) and 273a(1), her religious convictions plainly constitute no part of the State's case. Petitioner may seek to place her faith on trial, in hope of jury leniency or nullification. However, our state supreme court having held that California statutes protecting the child's welfare take precedence over the parent's religious practices, the State regards the reasonableness--and, indirectly, the verity--of petitioner's belief in the healing efficacy of prayer as irrelevant to her responsibility under the law. The negligence question for her jury is whether, religious convictions aside, a reasonable person would have taken an underweight, unresponsive, ultimately comatose, four-year-old to a doctor during the course of a seventeen-day illness.[2/] Nothing in the California Supreme Court's opinion suggests that petitioner's religious convictions are relevant to that question. (See 253 Cal.Rptr. at 15-18.)

Ironically, petitioner claims that her First Amendment right of free exercise inevitably will be

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2. The jury must also determine whether petitioner's failure to provide medical care proximately caused Shauntay's death, i.e., whether medical intervention would have saved the child after her serious condition had become so apparent that continued denial of medical treatment became grossly negligent.

infringed by a trial at which she, alone, has reason to inject her religion. Were petitioner to overcome the State's objection to evidence of her beliefs, however, she would be estopped from asserting a violation of the Free Exercise Clause. Similarly, petitioner would lack standing to complain that the jury's verdict represented either an endorsement or rejection of her religious beliefs, forbidden by the Establishment Clause. A verdict returned by a jury informed of petitioner's religious practices would be not only insolubly ambiguous, but a consequence of her own conduct, not of state action. (Cf. *Funkhouser* v. *State*, 763 P.2d 695, 697-698 (Okla. Crim. App. 1988), *cert. denied*, __ U.S. __(May 15, 1989) with *Commonwealth* v. *Barnhart*, 497 A.2d 616, 623-624 (Pa. Super. 1985), *cert. denied*, 109 S.Ct. 55 (1988).

II

PETITIONER'S PROCEDURAL DUE PROCESS CLAIM IS PREMATURE.

Petitioner's principal contention is that any conviction for child abuse or involuntary manslaughter would deny her Fourteenth Amendment procedural due process. Petitioner removed Shauntay from her home after she had been ill for sixteen days, but only hours after Claudia Oswald had threatened to inform the authorities of the child's condition. Petitioner nevertheless insists that she was denied fair warning of criminal liability for the consequences of denying the youngster medical

care. Her claim of constitutionally inadequate notice is premature.

First, petitioner has yet to be convicted of any offense.

Second, petitioner has yet to be brought to trial. If enacted into law, Assembly Bill 2325, as introduced in the California Legislature on March 10, 1989, and as amended on April 25, 1989, would bar petitioner's trial. Apart from overturning the statutory interpretation below, in section four Assembly Bill 2325 provides:

> "This act shall apply to all prosecutions in which judgment has not become final on the date this act becomes effective." (A copy of Assembly Bill 2325 is made "Appendix A" to this Response in Opposition.)

Third, petitioner recognizes that unless California's statutes are amended, the decision below "must control in all future prosecutions. . . ." (Pet., p. 13.) Since no one will be able to complain of lack of notice after November 10, 1988, the date of our state supreme court's decision below, it appears that only five people on the face of the earth could directly benefit from the resolution of petitioner's due process contention: petitioner and four other California defendants against whom identical charges are now pending.[3/] Apart from the fact that unique

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3. *People of the State of California* v. *Mark Rippberger and Susan Middleton*, Sonoma County Superior Court No. 13301-C; *People of the State of California* v. *Eliot Glaser*

factual circumstances may significantly color inadequate notice claims, (see, e.g., *Dennis* v. *United States*, 341 U.S. 494, 515-516 (1951)), the existence of a mere handful of prospective beneficiaries of a pre-trial ruling constitutes a prudential consideration favoring habeas corpus as the preferred federal remedy.

III

IF CONVICTED, PETITIONER WOULD NOT BE DENIED PROCEDURAL DUE PROCESS.

Petitioner claims a denial of federal procedural due process through the combined efforts of every branch of California's state government: *first*, in adding a religion exemption to the child support duties imposed by Penal Code section 270, "the California Legislature was 'well aware' that the effect of this amendment on parental liability under the involuntary manslaughter . . . and child endangerment . . . statutes was 'unclear,' " (Pet., pp. 4-5); *second*, representing the executive branch, the Sacramento County District Attorney "chose to prosecute Walker under §§ 192(b) and 273a (1), which had never before been used for such cases," and which, as applied to "cases such as this one," had "fallen into desuetude for more than a century," (Pet., p. 6, 12); *third*, the California Supreme Court, in a "revisionist rationalization [that] goes beyond routine implausibility to hover on the surreal,"

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and Lise Glaser, Los Angeles Superior Court No. A 753 942. Neither of the cases has reached trial.

(Pet., p. 13), "authorized the state to prosecute Laurie Walker under an unforeseeable judicial interpretation that reconciled statutes giving conflicting commands, extrapolated a criminal prohibition from legislative silence, and disregarded her reliance on affirmative signals that her conduct was lawful." (Pet., p. 10-11.)

A. "Desuetude"

We begin with petitioner's assertion that Penal Code section 270, a child support statute, was "the only law used by California for the last hundred years to prosecute parents for religiously-motivated failure to furnish medical care to their children." (Pet., p. 3.)

This assertion is inaccurate and misleading. In *People* v. *Arnold*, 58 Cal.Rptr. 115 (1967), a mother was convicted of involuntary manslaughter when her daughter died due to a bowel obstruction after the defendant refused to call a doctor for religious reasons. In 1974, two parents who provided their diabetic child with prayer treatment instead of insulin were convicted of felony child abuse and involuntary manslaughter. (*People of the State of California* v. *Alice Parker and Wesley Parker*, San Bernardino County Superior Court No. CR 29566, appeal abandoned, 4 Crim. No. 7210; see Los Angeles Times, Aug. 26, 1973, § 1, p. 3, col. 1 and p. 28, col. 1; July 20, 1974, § 1, p. 24. cols. 7-8.)

Perhaps petitioner discounts *Arnold* and *Parker* as simple misdemeanor-manslaughter cases, prosecuted on the theory that a parent's criminal liability for nonsupport

automatically escalates to manslaughter liability if the child dies as a consequence of the omission. Were that true, a section 270 violation effectively would have proven manslaughter in *Arnold* and *Parker*. In fact, it was settled before *Arnold* that an element of involuntary manslaughter is criminal negligence, defined as "such a departure from . . . the conduct of an ordinarily prudent or careful man under the same circumstances as to be incompatible with a proper regard for human life, or, in other words, a disregard of human life or an indifference to consequences." (*People* v. *Penny*, 285 P.2d 926, 937 (Cal. 1955).) Further, between *Penny* and *Arnold*, the California Supreme Court held that to be an "unlawful act, not amounting to a felony" within the meaning of Penal Code section 192, an act must be dangerous to human life or safety *and* be committed with criminal intent or criminal negligence.[4] (*People* v. *Stuart*, 302 P.2d 5, 9 (Cal. 1956); accord, *People* v. *Villalobos*, 25 Cal.Rptr. 111, 114 (Cal. App. 1962) (section 273a child abuse and involuntary manslaughter).) That is why in *Arnold* the trial judge "instructed the jury that it could find defendant guilty of manslaughter if it found that defendant had violated Penal Code section 270 or 272, which describe misdemeanor offenses, that such violation had caused death, *and* that defendant acted in a manner dangerous to life and knew, or should have known, of this danger."

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4. Criminal negligence is also an element of child endangerment. (*People* v. *Peabody*, 119 Cal.Rptr. 780, 783 (Cal.App. 1975).)

(*People* v. *Arnold*, *supra*, 58 Cal.Rptr. at 117-118 (emphasis supplied).)

Since, under our manslaughter statute, liability may attend "the commission of a lawful act which might produce death . . . [done] without due caution and circumspection," (Calif. Pen. Code, § 192(b)), a violation of section 270 is not a necessary predicate for a violation of section 192(b), even in such cases as *Arnold*, *Parker*, or *Walker*. Since, under *Penny* and *Stuart*, liability for a death resulting from "the commission of an unlawful act, not amounting to a felony" requires proof of a misdemeanor inherently dangerous to life, committed with criminal intent or criminal negligence, charging a section 270 violation adds nothing to such a prosecution but a lesser included offense.

In short, California has previously convicted parents of involuntary manslaughter for the kind of conduct alleged here; moreover, prosecution under section 270 for failure to provide child support has not been essential to prosecution for manslaughter.

B. No Legislative Entrapment

1. 1976 Amendment to Penal Code Section 270

In amending section 270, petitioner asserts, "the California Legislature was well aware that this message of legalization would cast doubt on whatever possibility might otherwise have existed of parental liability under the felony child endangerment [citation] and involuntary

manslaughter statutes. . . ." (Pet., p. 3.) As proof of the Legislature's "deliberate obfuscation," (Pet., p. 26), and of its "considered silence following its recognition that its child welfare statutes send inconsistent and ambiguous signals," (Pet., p. 15), petitioner quotes selected passages from legislative committee reports. (Pet., pp. 15-16.)

First, petitioner states that "[t]he analysis of the Assembly Committee on Criminal Justice was that '[t]he bill appears unclear' with respect to possible prosecution for child endangerment and involuntary manslaughter." (Pet., p. 15.) Petitioner omits the following language from the same paragraph of the same committee report:

> "Thus, though the parents may not be liable for failing to provide for the health of the child because they chose treatment by prayer rather than common medical treatment, they would be liable if the child suffered any physiological harm. Second, no exception is made under the manslaughter statutes for parental liability should the child die."[5/]

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5. The quoted language prompted an April 23, 1976 letter from the amendment's sponsor to its author:

> "Tom Clarke [Chief Consultant, Criminal Justice Committee] was kind enough to show us an advance copy of the Committee analysis of our bill, for which we are very grateful.
> "Tom's comment to me was, 'I didn't think you went far enough,' and this perhaps explains his comments in the last part of the analysis."

Petitioner makes similar use of a passage from the California Senate's Judiciary Committee report on the 1976 amendment to section 270. That language, quoted in the opinion below, recognizes a distinction between parental liability for failure to provide child support and for the consequences of that failure. (253 Cal.Rptr. at 11.) After reviewing the well-documented legislative history of the 1976 amendment, our state high court concluded that "the members of the Legislature were fully conscious of the potential liability remaining under sections 192(b) and 273a(1) for conduct they had legalized with respect to section 270, but simply chose to leave the matter unaddressed." (*Ibid.*) In other words, by amending a child support statute, the Legislature did not intend to amend impliedly child endangerment and involuntary manslaughter statutes.

The California Supreme Court found in the Legislature's "considered silence" a determination not to relieve from criminal liability parents who relied upon prayer treatment to the exclusion of medical care when a child is at risk of serious harm or death. Our high court did not accuse the Legislature of confusing persons of ordinary intelligence, much less of statutory vagueness or conflicting commands amounting to legislative entrapment.

2. **Other Statutes**

Petitioner claims to have received "affirmative signals that her conduct was lawful" from the "'plethora of statutes exempting prayer practitioners and their facilities

from medical licensing requirements or variously accommodating individuals who choose to rely on such treatment. . . ." (Pet., p. 11 and p. 5 n.2) "These accommodative provisions, however, evince no legislative sanction of prayer for the treatment of children in life-threatening circumstances." (*Walker* v. *Superior Court*, *supra*, 253 Cal.Rptr. at 12.)

Petitioner invokes, for example, several sections of the California Business and Professions Code. (Pet., p. 11 fn. 6.) These licensing provisions regulating doctors and nurses do not relieve parents of their statutory duty to provide children medical attendance; instead, these statutes merely recognize that those receiving treatment from faith healers, understanding that the effectiveness of prayer is entirely independent of the knowledge of anatomy, require no licensing protection from the state. (*People* v. *Jordan*, 156 Pac. 451 (Cal. 1916).)

Similarly, the California Welfare and Institutions Code sections cited by petitioner generally relate to adults and reimbursements, reflecting the Legislative's attempt to encourage the free exercise of religion by those old enough to be responsible for themselves. (Contrast, *Prince* v. *Massachusetts*, 321 U.S. 158, 170 (1944).)

Far more relevant is Welfare and Institutions Code section 300.5, which authorizes a juvenile court to declare a child its dependent on the basis of the minor's need for medical care, requiring only that the court "give consideration" to any prayer treatment being provided. In exercising that discretion, the juvenile court finds guidance in section 16509 of the same code:

> "Cultural and religious child-rearing practices and beliefs which differ from general community standards shall not in themselves create a need for child welfare services unless the practices present a specific danger to the physical or emotional safety of the child."

No encouragement to risk the child's life in order to vindicate the parent's religious beliefs may reasonably be found in California's statutes. To the contrary, the statutory authorization of civil intervention on the child's behalf exists only to avert such jeopardy. Indeed, if petitioner believed her conduct was protected by law, her removal of Shauntay from the family home hours after petitioner's sister threatened to notify the authorities, must have been an extraordinary coincidence.

C. **No Unforeseeable Judicial Interpretation**

1. **"Heightened Scrutiny"**

Petitioner complains that the California Supreme Court "completely failed to recognize that laws are subject to heightened fair warning scrutiny not only when they prohibit protected conduct but whenever they 'abut upon' or 'regulate' an 'area . . . closely touching our most precious freedoms.'" (Pet., p. 18.) Heightened judicial scrutiny responds to the dangers of chilling protected

conduct and arbitrary enforcement, whether by policemen, prosecutors, or jurors.

As applied by our state supreme court below, California's statutes do not inhibit constitutionally protected conduct. "The right to practice religion freely does not include liberty to expose the community or the child to communicable disease or the latter to ill health or death." (*Prince* v. *Massachusetts*, *supra*, 321 U.S. at 167.) Thus, because Penal Code section 270's limited accommodation of religion is not constitutionally compelled, its religion exemption describes conduct that is statutorily protected, not constitutionally protected.

Moreover, standing alone, Penal Code section 270 encourages rather than inhibits religious practices. Penal Code sections 192(b) and 273a(1), under which petitioner stands charged, are on their face religion-neutral. "The only conduct that could possibly be 'chilled' by the interrelation of these statutes is reliance on prayer alone in circumstances reached by sections 192(b) and 273a(1) --that is, when the conduct endangers or takes the life of a child. In such circumstances, free exercise is not implicated." (*Walker* v. *Superior Court*, *supra*, 253 Cal.Rptr. at 22 fn. 19.)

Our statutes do not cast a wide net, enabling the police to catch up faith healers as they once did vagrants and vagabonds. (See *Papachristou* v. *Jacksonville*, 405 U.S. 256 (1972)). And, although no "scienter" requirement stands between religious practitioners and zealous prosecutors, the requirement of proof beyond reasonable doubt of criminal negligence affords a parent accused of

child endangerment or involuntary manslaughter adequate protection against arbitrary or discriminatory prosecution and conviction.

2. Judicial Interpretation Consistent with Plain Language of Statute and State Policy of Protecting Children

Petitioner contends that the limited authorization for prayer treatment contained in Penal Code section 270 and the proscriptions against child endangerment and involuntary manslaughter contained in Penal Code sections 192(b) and 273a(1) send "conflicting signals" unintelligible to persons of ordinary understanding. (Pet., p. 13.) She further contends that the California Supreme Court's "reconciliation" of these provisions was "wholly unforeseeable." (*Ibid.*)

We perceive no inherent conflict between statutes which punish manslaughter or exposing a child to "conditions likely to produce great bodily harm or death," and a statute that accommodates parental religious practices which do not jeopardize the child's life or limb. Nor do we agree that reasonable persons would be surprised by a judicial interpretation of these statutes that is consistent with the state legislature's authorization for civil law intervention, (Calif. Welf. & Inst. Code, §§ 300.5 and 16509), and consistent with the plain language of the relevant penal statutes.

Several state trial judges, three state intermediate appellate court justices, and seven state supreme court

justices all have concluded that, under our statutes, petitioner may be tried for manslaughter. The lone jurist who concluded that petitioner may not be tried for child endangerment did not do so on procedural due process grounds, but to fulfill a legislative design that not even petitioner pressed upon the court. (*Walker* v. *Superior Court*, 253 Cal.Rptr. at 27-30 (Broussard, J., concurring and dissenting).)

Apart from the fact that state statutes authorize judicial intervention on behalf of children placed at risk by parental religious practices, petitioner's trial judge observed that "Notice can also be implied from the fact that Penal Code section 270 explicitly limits the religious exemption to that section." (Pet., Appendix C, p. A91.) This conclusion is supported by the plain language of section 270, which accommodates religion by defining "prayer treatment" as "'remedial care,' as used in this section."

The California Court of Appeal held that "the clear meaning of the statute compels rejection of [petitioner's] contention" that "there was no adequate notice that her conduct was criminal. . . ." (222 Cal.Rptr. at 94; Pet., App. B, p. A70.) "As we have previously pointed out," the Court of Appeal added, "sections 192 and 273a are unambiguous. The language of those sections clearly set forth conduct constituting involuntary manslaughter and child endangerment without any reference to spiritual treatment." (*Ibid.*)

Finally, we note that petitioner's due process claim is not a conventional void-for-vagueness challenge. Penal

Code sections 192 and 273a, under which she stands charged, are unambiguous on their face; instead, she asserts ambiguity in section 270, under which she is not charged. In effect, petitioner claims reasonable reliance on section 270 as authorizing the very conduct the State would now punish. It is difficult to reconcile such reliance with petitioner's removal of her child from the home shortly after petitioner's sister threatened to make Shauntay's condition known to the State. Of course, that is a matter as to which a federal habeas court could conduct an evidentiary inquiry.

CONCLUSION

For the stated reasons, respondent respectfully urges this Court to deny the petition for writ of certiorari.

DATED: May 26, 1989

Respectfully submitted,

JOHN K. VAN DE KAMP
Attorney General
of the State of California

RICHARD B. IGLEHART
Chief Assistant Attorney General

JOHN H. SUGIYAMA
Senior Assistant Attorney General

HERBERT F. WILKINSON
Supervising Deputy Attorney General

CLIFFORD K. THOMPSON, JR.
Deputy Attorney General

Attorneys for Respondent

APPENDIX

AMENDED IN ASSEMBLY APRIL 25, 1989

CALIFORNIA LEGISLATURE

1989-90 REGULAR SESSION

ASSEMBLY BILL **NO. 2325**

Introduced by Assembly Member Frizzelle

March 10, 1989

An act to amend Sections 270 and 11166 of the Penal Code, relating to crimes.

LEGISLATIVE COUNSEL'S DIGEST

AB 2325, as amended, Frizzelle. Child abuse: medical attendance.

(1) Existing law makes it a crime for a parent of a minor child to willfully omit, without lawful excuse, medical attendance or other remedial care for his or her child. Existing law provides that if a parent provides a minor with treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof that treatment constitutes other remedial care.

This bill would instead specify that treatment by a religious method of healing, having a generally accepted record of efficacy, as specified, constitutes other remedial care. It also would provide that no parent or other

person responsible for the care and well-being of a child shall be subject to prosecution under the above or any other section of the Penal Code for any cause arising from the failure of a parent or other person to furnish medical attendance for the child if the parent or other person has furnished other remedial care.

(2) Existing law, the Child Abuse and Neglect Reporting Act, requires a health practitioner, as defined, which includes a religious practitioner, who has knowledge of, or who observes a child in his or her professional capacities or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of, child abuse, to make a report thereof, as specified. Existing law also provides that any person who is required to report instances of child abuse, as specified, and who fails to make the report is guilty of a misdemeanor.

This bill would exempt a religious practitioner from the requirement of making a report concerning the failure of any parent or other person having responsibility for the care and well-being of a child to provide medical attendance, if the parent or person has provided the child with treatment by other remedial care, as specified.

(3) This bill would also make a statement declaratory of legislative intent.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The People of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that it is both the policy and the constitutional obligation of the State of California to accommodate the free exercise of religious belief on the part of its citizens to the greatest extent compatible with the obligation of the state to protect the health and well-being of children.

(b) The Legislature finds and declares that the efficacy of certain forms of nonmedical forms of remedial care have been recognized by public and private health authorities including, among others, health care insurers, and that among the reasonable and generally accepted forms of remedial care is treatment by certain religious methods of healing having a generally accepted record of success. The Legislature further finds and declares that the general physical and emotional health of children who, in lieu of medical attendance, receive other remedial care in the form of treatment by religious methods of healing having a generally accepted record of efficacy is at least as good as that of the general public. The Legislature further finds and declares that subjecting to criminal prosecution parents whose children become seriously ill or die, despite the diligent efforts of the parent to provide alternative nonmedical remedial care to the child including care in the form of treatment by religious methods of healing having a generally accepted record of efficacy, will not significantly affect the health and well-being of either the individual children concerned or of the general public.

(c) The purpose of this act is to clarify and reemphasize what has been the intent of the Legislature since at least 1976, that no parent or person responsible for the care of a child should be criminally prosecuted under any statute of the State of California for failing to provide medical care to a child when a person has provided the child with another reasonable form of remedial care, including remedial care in the form of treatment by religious methods of healing having a generally accepted record of efficacy. Neither should any religious practitioner who diagnoses, examines, or treats children by a reasonable nonmedical form of remedial care, including care in the form of treatment by religious methods of healing having a generally accepted record of efficacy be subject to criminal prosecution for failing to report as child abuse or neglect the omission of a parent or other person responsible for the care of a child to provide medical care to the child when the parent or other person provides the child with nonmedical remedial care, including care in the form of treatment by religious methods of healing having a generally accepted record of efficacy.

SEC. 2. Section 270 of the Penal Code is amended to read:

270. If a parent of a minor child willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter or medical attendance, or other remedial care for his or her child, he or she is guilty of a misdemeanor punishable by a fine not exceeding two thousand dollars ($2,000), or by imprisonment in the county jail not

exceeding one year, or by both such fine and imprisonment. If a court of competent jurisdiction has made a final adjudication in either a civil or a criminal action that a person is the parent of a minor child and the person has notice of such adjudication and he or she then willfully omits, without lawful excuse, to furnish necessary clothing, food, shelter, medical attendance or other remedial care for his or her child, this conduct is punishable by imprisonment in the county jail not exceeding one year or in a state prison for a determinate term of one year and one day, or by a fine not exceeding two thousand dollars ($2,000), or by both such fine and imprisonment. This statute shall not be construed so as to relieve such parent from the criminal liability defined herein for such omission merely because the other parent of such child is legally entitled to the custody of such child nor because the other parent of such child or any other person or organization voluntarily or involuntarily furnishes such necessary food, clothing, shelter or medical attendance or other remedial care for such child or undertakes to do so.

Proof of abandonment or desertion of a child by such parent, or the omission by such parent to furnish necessary food, clothing, shelter or medical attendance or other remedial care for his or her child is prima facie evidence that such abandonment or desertion or omission to furnish necessary food, clothing, shelter or medical attendance or other remedial care is willful and without lawful excuse.

The court, in determining the ability of the parer to support his or her child, shall consider all income including social insurance benefits and gifts.

The provisions of this section are applicabl whether the parents of such child are or were eve married or divorced, and regardless of any decree mad in any divorce action relative to alimony or to the suppor of the child. A child conceived but not yet born is to b deemed an existing person insofar as this section i concerned.

The husband of a woman who bears a child as result of artificial insemination shall be considered th father of that child for the purpose of this section, if h consented in writing to the artificial insemination.

If a parent or other person responsible for the car and well-being of a child provides a child with treatmen by a religious method of healing, having a generall accepted record of efficacy, the treatment shall constitut "other remedial care," as used in this section.

A religious method of healing shall be conclusivel presumed to have a "generally accepted record of efficacy if one or both of the following applies:

(1) Fees and expenses incurred in connection wit the treatment are permitted to be deducted from taxabl income as "medical expenses" pursuant to regulations o rulings promulgated by the United States Internal Revenu Service or the California Franchise Tax Board.

(2) Fees and expenses incurred in connection wit the treatment are generally recognized as reimbursabl health care expenses under medical policies of insuranc

issued by entities authorized to issue these policies by the California Department of Insurance.

A religious method of healing which does not qualify under either (1) or (2) above may be found to have a "generally accepted record of efficacy" on the basis of other evidence that the treatment is recognized by a substantial percentage of public or private health authorities as providing a rate of success in maintaining health, treating disease, or injury that is equivalent to that of medical forms of treatment.

No parent or other person responsible for the care and well-being of a child shall be subject to prosecution under this or any other section of the Penal Code for any cause arising from the failure of the parent or other person to furnish medical attendance for the child if the parent or other person has furnished other remedial care for the child in lieu of medical attendance.

SEC. 3. Section 11166 of the Penal Code is amended to read:

11166. (a) Except as provided in subdivisions (b) and (h), any child care custodian, health practitioner, or employee of a child protective agency who has knowledge of or observes a child in his or her professional capacity or within the scope of his or her employment whom he or she knows or reasonably suspects has been the victim of child abuse shall report the known or suspected instance of child abuse to a child protective agency immediately or as soon as practically possible by telephone and shall prepare and send a written report thereof within 36 hours of receiving the information concerning the incident. A

child protective agency shall be notified and a report sh
be prepared and sent even if the child has expir
regardless of whether or not the possible abuse wa
factor contributing to the death, and even if suspec
child abuse was discovered during an autopsy. For
purposes of this article, "reasonable suspicion" means t
it is objectively reasonable for a person to entertain su
a suspicion, based upon facts that could cause
reasonable person in a like position, drawing wh
appropriate on his or her training and experience,
suspect child abuse. For the purpose of this article,
pregnancy of a minor does not, in and of itself, constit
the basis of reasonable suspicion of sexual abuse.

(b) Any child care custodian, health practition
or employee of a child protective agency who
knowledge of or who reasonably suspects that men
suffering has been inflicted on a child or his or
emotional well-being is endangered in any other way, m
report such known or suspected instance of child abuse
a child protective agency.

(c) Any commercial film and photographic pr
processor who has knowledge of or observes, within t
scope of his or her professional capacity or employme
any film, photograph, video tape, negative or sli
depicting a child under the age of 14 years engaged in
act of sexual conduct, shall report such instance
suspected child abuse to the law enforcement agen
having jurisdiction over the case immediately or as soon
practically possible by telephone and shall prepare a
send a written report of it with a copy of the fil

photograph, video tape, negative or slide attached within 36 hours of receiving the information concerning the incident. As used in this subdivision, "sexual conduct" means any of the following:

(1) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex or between humans and animals.

(2) Penetration of the vagina or rectum by any object.

(3) Masturbation, for the purpose of sexual stimulation of the viewer.

(4) Sadomasochistic abuse for the purposes of sexual stimulation of the viewer.

(5) Exhibition of the genitals, pubic or rectal areas of any person for the purpose of sexual stimulation of the viewer.

(d) Any other person who has knowledge of or observes a child whom he or she knows or reasonably suspects has been a victim of child abuse may report the known or suspected instance of child abuse to a child protective agency.

(e) When two or more persons who are required to report are present and jointly have knowledge of a known or suspected instance of child abuse, and when there is agreement among them, the telephone report may be made by a member of the team selected by mutual agreement and a single report may be made and signed by such selected member of the reporting team. Any member who has knowledge that the member designated

to report has failed to do so, shall thereafter make a report.

(f) The reporting duties under this section are individual, and no supervisor or administrator may impede or inhibit the reporting duties and no person making a report shall be subject to any sanction for making a report. However, internal procedures to facilitate reporting and apprise supervisors and administrators of reports may be established provided that they are not inconsistent with the provisions of this article.

The internal procedures shall not require any employee required to make reports by this article to disclose his or her identity to the employer.

(g) A county probation or welfare department shall immediately or as soon as practically possible report by telephone to the law enforcement agency having jurisdiction over the case, to the agency given the responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code, and to the district attorney's office every known or suspected instance of child abuse as defined in Section 11165.6, except acts or omissions coming within subdivision (b) of Section 11165.2 which shall only be reported to the county welfare department. A county probation or welfare department shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

A law enforcement agency shall immediately or as soon as practically possible report by telephone to

agency given responsibility for investigation of cases under Section 300 of the Welfare and Institutions Code and to the district attorney's office every known or suspected instance of child abuse reported to it, except acts or omissions coming within subdivision (b) of Section 11165.2, which shall only be reported to the county welfare department. A law enforcement agency shall report to the county welfare department every known or suspected instance of child abuse reported to it which is alleged to have occurred as a result of the action of a person responsible for the child's welfare, or as the result of the failure of a person responsible for the child's welfare to adequately protect the minor from abuse when the person responsible for the child's welfare knew or reasonably should have known that the minor was in danger of abuse. A law enforcement agency shall also send a written report thereof within 36 hours of receiving the information concerning the incident to any agency to which it is required to make a telephone report under this subdivision.

(h) Notwithstanding any other provision of law, no religious practitioner who diagnoses, examines, or treats children shall be required to report the failure of any parent or other person having responsibility for the care and well-being of a child to provide medical attendance to the child if, in lieu thereof, the parent or person has provided the child with other remedial care as provided in Section 270.

SEC. 4. This act shall apply to all prosecut
which the judgment has not become final on the da
act becomes effective.

CERTIFICATE OF SERVICE BY MAIL

No. 88-1471

LAURIE WALKER,
Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,
Respondent.

CLIFFORD K. THOMPSON, JR., a member of the Bar of the Supreme Court of the United States, states:

That his business address is 350 McAllister Street, Room 6000, in the City and County of San Francisco, State of California; that on May 26, 1989, he served true copies of the attached Response for the People of the State of California as Respondent in the above-entitled matter on counsel for petitioner by placing same in envelopes addressed as follows:

Laurence M. Tribe
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138

Brian Stuart Koukoutchos
45 Fresh Pond Place
Cambridge, Massachusetts 02138

Thomas A. Volk

Thomas A. Volk
Robert G. Scofield
1721 Second Street, Suite 102
Sacramento, CA 95814

Deputy District Attorney John O'Mara
Office of the District Attorney
of Sacramento County
901 G Street
P. O. Box 749
Sacramento, CA 95804

Said envelopes were then sealed and deposited i
the United States mail at San Francisco, California, wit
the postage thereon fully prepaid.

CLIFFORD K. THOMPSON, JR.
Deputy Attorney General

Supreme Court, U.S.
FILED
JUN 6 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1471

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

LAURIE WALKER,

Petitioner,

v.

SUPERIOR COURT OF SACRAMENTO COUNTY,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

PETITIONER'S REPLY TO THE ATTORNEY GENERAL'S RESPONSE IN OPPOSITION

LAURENCE H. TRIBE
Counsel of Record
KENNETH J. CHESEBRO
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

THOMAS A. VOLK
ROBERT G. SCOFIELD
1721 Second Street
Sacramento, California

June 6, 1989

BATEMAN & SLADE, INC. BOSTON, MASSACHUSETTS

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PETITIONER'S REPLY TO THE ATTORNEY GENERAL'S RESPONSE IN OPPOSITION

The petition explained why this case is of great importance in defining how the states may operate within the broad zone of "permissible accommodation" — what standards are to govern when a state chooses neither to make religious belief altogether irrelevant to civil or criminal liability, nor to accommodate such belief by fully exempting those who pursue its dictates in good faith. The question potentially posed in all such situations is whether states may hedge their bets by electing a form of "quasi-accommodation" — whether they may enact laws (like the 1976 amendment to California's child neglect statute) which *appear* to accommodate religious beliefs by inviting people to adhere to those beliefs free of liability in certain situations, but which are later *construed* to permit the conviction of adherents who are judged to have carried their beliefs too far, based on an assessment by prosecuting officials and jurors that continued adherence to those beliefs became "unreasonable" as the situations those adherents confronted became increasingly dire.

The Attorney General's opposing brief essentially concedes that such trials of faith are barred by the First Amendment as interpreted in *United States* v. *Ballard*, 322 U.S. 78 (1944). It concedes, further, that the state's statutory regime gives defendants "reason to inject [their] religion at trial" (Opp. 8), inasmuch as § 270 itself, ever since 1976, has described "treatment by spiritual means through prayer alone" as suitable "remedial care" for an ailing child.

A number of other states are now considering the issue posed by the decision below — the issue of how to proceed in the face of a state's offer to spare religiously motivated individuals if juries choose to side with them when they "seek to place [their] faith on trial" (Opp. 8) in response to that

offer.[1] At least one other state court has adopted the analysis of the California Supreme Court in upholding state power to put religiously motivated defendants to this choice.[2] Nor does the Attorney General deny the observation (Pet. 22-23) that another state's judiciary has recently taken a position conflicting with the court below. Certiorari is accordingly in order to resolve this conflict and to prevent continued erosion of the *Ballard* principle.

1. In response to the argument that the statutory regime promulgated by the California legislature impermissibly confronts Laurie Walker with a jury trial on the reasonableness of her religious beliefs, the Attorney General's simple refrain is: it's all her fault. The Attorney General observes that, because her "religion is not an element of the offenses" with which she is charged, "her religious convictions plainly constitute no part of the State's case." (Opp. 8.) He says that, because the State is not *required* to accommodate her religious beliefs in the application of its child-protection statutes, "the reasonableness — and, indirectly, the verity — of petitioner's belief in the healing efficacy of prayer [is] *irrelevant* to her responsibility under the law." (Rep. 8. (emphasis in original).) He concedes that, under California's law, "[p]etitioner may seek to place her faith on trial, in hope of jury leniency or nullification." (Pet. 8.) But he says that, if she did, "she would be estopped from asserting a violation of the Free Exercise Clause" — the trial of faith she would undergo would be simply "a consequence of her own conduct, not state action." (Opp. 9.)

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[1] *See, e.g., State* v. *Hermanson* (Florida — Sarasota County Superior Court, 12th Judicial District, Nos. 86-3231-CF-A-N1 & 86-3231-CF-A-N1); *Commonwealth* v. *Twitchell* (Massachusetts — Suffolk Superior Court, Nos. 069517 & 069757); *State* v. *King* (Arizona — Maricopa County Superior Court, No. CR 88-07284).

[2] *State* v. *King, supra* note 1, Order Denying Motion to Dismiss, March 3, 1989.

But, as the California Supreme Court noted in the decision below, the Attorney General's own argument in that court urged permitting the petitioner to introduce evidence of her faith in proving her "reasonable reliance" on her construction of § 270. (*See* Pet. App. A37 n. 18.) Whether that rubric is accepted or rejected, petitioner's religious beliefs are indisputably relevant to whether she can be convicted of felony child endangerment or involuntary manslaughter. For, as the court below concluded, in passing its 1976 amendment to § 270's specification of the care that parents generally must provide children, the California legislature decided to "shield from liability those parents who provide prayer in lieu of medical care for their children" (A7), by stating that parents have provided necessary care if they provide "treatment by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by a duly accredited practitioner thereof" (§ 270). To be sure, under the novel statutory interpretation pioneered by the court below, if the child of a parent following this invitation becomes extremely ill or dies, the parent is open to prosecution for felony child endangerment under § 273a(1) or involuntary manslaughter under § 192(b). But the jury question then becomes whether a "reasonable person" in those circumstances would have given up on God and summoned a doctor when the child for whom she had prayed in accord with § 270 continued to languish.

Because of § 270's partial accommodation, the circumstances to which the state's objective reasonableness test must be applied will necessarily be bound up with the reasonableness and truth of the religious beliefs that prompted the parent to *continue* to act under the sanction of § 270 rather than to abandon her faith and turn to medicine. For if the parent pointed out to the jury that prayer was presumptively reasonable under § 270, at least at the outset, and further convinced the

jury that prayer continued to be reasonable even as the child's condition worsened, and in fact was as effective as medical care might have been, the jury would have to acquit her of any violation of California's criminal law.

The Attorney General is thus flatly wrong in saying that the question is "whether, religious convictions aside" (Opp. 8), the parent's decisions were reasonable. For the California legislature expressly made the efficacy and reasonableness of a defendant's choice for prayer in lieu of medical treatment *directly relevant* in this situation. And it is beyond dispute that a defendant has a *right* to "present [her] version of the facts . . . to the jury so it may decide where the truth lies," *Washington* v. *Texas*, 388 U.S. 14, 19 (1967) — a right that is "a fundamental element of due process of law." *Id.* Even though "[f]ew rights are more fundamental," *Chambers* v. *Mississippi*, 410 U.S. 284, 302 (1973), than the right to adduce in one's defense the logically material arguments and evidence that one chooses to adduce, the Attorney General proposes that people like petitioner simply give up this right as a condition of preventing a jury from investigating their religious beliefs.

The Attorney General has thus conceded that, if this trial is to go forward, petitioner would have to choose between undergoing a trial of her religious beliefs, and submitting to punishment without presenting a defense that the state's own statutes make logically relevant — the same kind of choice put to Anne Hutchinson and Roger Williams, and one danger the Free Exercise Clause was adopted to prevent. But such "a choice between the rock and the whirlpool" is "[i]n reality . . . no choice at all." *Frost* v. *Railroad Comm'n*, 271 U.S. 583, 593 (1926). For it is settled that government may not demand "that one constitutional right should have to be surrendered in order to assert another." *Simmons* v. *United States*, 390 U.S. 377, 394 (1968).

2. Nor does the Attorney General offer any meaningful response to petitioner's further argument that the judgment below conflicts with this Court's "fair warning" jurisprudence. Instead, the Attorney General merely argues that California's statutes *may* rationally be read so as to warn persons in petitioner's position that, if they rely on spirtual healing as § 270 tells them they are free to do, they act at their peril. Petitioner has never denied that this is a *possible* reading — noting only that, in this sensitive area, greater clarity is mandated. The Attorney General's basic response is that reduced tolerance for ambiguity is inappropriate because § 270 "*encourages* . . . religious practices." (Opp. 19 (emphasis added).) But that is the very problem to which the petition in this case points: California has invited its citizens to act in accord with the dictates of their faith — and then submit to trials focused on how reasonable they were in doing so. It is this very invitation that entails First Amendment dangers compelling closer scrutiny of problematic ambiguity than the court below accorded.

The Attorney General's second response is that petitioner *must* have been on notice of possible prosecution because she removed her ill daughter from the family home soon after her sister threatened to call the police. (Opp. 4, 18, 22.) But that merely restates the obvious — that the state's laws are *susceptible* to a reading that makes petitioner's guilt or innocence turn on whether police, prosecutors, and jurors find her faith unreasonable.

The Attorney General's third and final response on the issue of fair warning is that the 1976 amendment to § 270 did not give a fatally conflicting signal to people in petitioner's position because § 270 was *not* "the only law used by California for the last hundred years to prosecute parents for religiously-motivated failure to furnish medical care to their children." (Opp. 12 (quoting Pet. 3).) But in support of this thesis the Attorney General mysteriously cites only the very prosecution under

§ 270 that triggered the 1976 amendment (*People* v. *Arnold*) and a 1974 prosecution (of Alice and Wesley Parker) obviously predating that amendment, which *also* relied in part on § 270, which in any event resulted in no reported decision, which led to no ruling on appeal, and in which all charges against the parents were in the end set aside.[3] How this history even begins to meet petitioner's notice argument is, to say the least, unclear.

3. The Attorney General asserts that petitioner's claims are "premature" because she "has yet to be convicted of any offense" and "has yet to be brought to trial." (Opp. 9-10.) The latter assertion is particulary striking in its observation that a bill is pending before the state legislature that would, if adopted, statutorily overturn the *Walker* decision and bar the prosecution of petitioner and of others similarly situated. Apart from the incongruity of allowing a state to make such a "potential mootness" claim before review is even granted, the Attorney General makes no comment about the bill's obviously dim chance for passage. Moreover, the day after the Attorney General filed his brief in opposition in this case, he wrote a number of legislators urging that the pending bill be defeated as inconsistent with the state's policy of protecting children.[4] Finally, given California's choice of quasi-accommodation, there is no point in awaiting the outcome of a trial: trying petitioner would itself guarantee that her constitutional rights would be violated — inasmuch as she would be compelled to choose between abandoning a defense made logically relevant by the 1976 amendment to § 270, and sacrificing the right not to submit to a jury the reasonableness of her religious beliefs.

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[3] *See* remittitur and order dismissing appeal, Lawrence and Alice Parker, 4 CRIM. 7210, dated 3/20/75 and 4/25/75, respectively; Minute Order, Case No. 29556, dated 6/23/78.

[4] *See, e.g.*, Letter from John K. Van de Kamp to Assemblymen Bates and Harris, May 26, 1989 (five pages).

4. The Attorney General's suggestion that this case appears to affect "only five people on the face of the earth" (Opp. 10) — Laurie Walker and four other similarly situated California defendants — blatantly ignores the wide implications of the decision below for religious freedom and fair trial in America. That suggestion ignores the several other states in which similar prosecutions are pending, *see supra* note 1, in one of which the opinion of the court below has been closely followed, *see supra* note 2. And the puzzling notion that the supposed "mere handful of prospective beneficiaries" of a decision by this Court should be relegated to a habeas corpus remedy (Pet. 11) sheds no light at all on whether the *legal issues* presented here are sufficiently weighty to merit plenary review by this Court, and presupposes a preference for habeas corpus that conflicts with the jurisprudence of the past two decades.

5. If this Court were to deny review despite the Attorney General's candid insistence on pursuing a quasi-accommodation theory and despite the other cases throughout the country where this issue is immediately relevant, there will remain on the books a conspicuous precedent that will unsettle the law of religious accommodation in ways previously unimaginable. When this Court has previously upheld a state's flat refusal to accommodate religious belief, it has never hinted that an acceptable alternative might have been a *partial* accommodation in which defendants were invited to put their religious beliefs on trial before secular juries. No one would doubt, for example, that Massachusetts could not subject the religious pamphleteers in *Prince* v. *Massachusetts*, 321 U.S. 158 (1944), to a rule *allowing* them to use children to distribute leaflets on the streets — but only if jurors found reasonable the religious belief directing such child labor. And when this Court has previously upheld a governmental decision to accommodate religious belief by granting blanket dispensations to religious groups (for their non-profit, secular activities as well as for their religious activ-

ities), it has been apparent that a narrower, partial accommodation — one which would require a case-by-case examination of which activities were reasonably seen as religious — would be constitutionally problematic. *See, e.g., Corporation of the Presiding Bishop* v. *Amos*, 107 S. Ct. 2862, 2872-73 (1987) (Brennan, J., concurring).

Conclusion

What in the past has been implicit can, through review of this case, be made explicit: that in attempting to be responsive to religious groups while satisfying important secular policies, government may not simply split the difference by *appearing* to accommodate religious belief, but doing so only in a partial way that, if a fair trial is to be held, requires subsequent examination of the reasonableness of the religious beliefs at issue. If this Court accepts review and reverses, it would not be imposing constitutional values on democratically elected majorities. It would instead be enhancing the political process by ensuring that the people's elected representatives make clear choices on matters of religious accommodation rather than seeking to have it both ways and, in the process, trampling basic constitutional rights.

Respectfully submitted,

LAURENCE H. TRIBE
Counsel of Record
KENNETH J. CHESEBRO
1525 Massachusetts Avenue
Cambridge, Massachusetts 02138
(617) 495-1767

Of Counsel:

THOMAS A. VOLK
ROBERT G. SCOFIELD
1721 Second Street
Sacramento, California

June 6, 1989